REVENUE DEPARTMENT[701]

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CHAPTER 1
STATE BOARD OF TAX REVIEW—ADMINISTRATION

1.1(17A,421) Establishment, membership and location of the state board of tax review
1.2(421,17A) Powers and duties of the state board
1.3(421,17A) Powers and duties not subject to the jurisdiction of the state board

CHAPTER 2
STATE BOARD OF TAX REVIEW—CONDUCT OF APPEALS AND RULES OF PRACTICE AND PROCEDURE

DIVISION I
APPELLATE CASES

GENERAL RULES OF PRACTICE AND PROCEDURE FOR FINAL CONTESTED CASE DECISIONS OF OR ATTRIBUTABLE TO THE DIRECTOR OF REVENUE

2.1(421,17A) Definitions
2.2(421,17A) Appeal and jurisdiction
2.3(421,17A) Form of appeal
2.4(421,17A) Certification by director
2.5(421,17A) Motions
2.6(421,17A) Answer
2.7(421,17A) Docketing
2.8(421,17A) Filing of papers
2.9(421,17A) Hearing an appeal
2.10(17A,421) Appearances by appellant
2.11(421,17A) Authority of state board to issue procedural orders
2.12(421,17A) Continuances
2.13(17A,421) Place of hearing
2.14(17A,421) Members participating
2.15(17A,421) Presiding officer
2.16(17A,421) Appeals of state board decisions

DIVISION II
ORIGINAL JURISDICTION

RULES GOVERNING CONTESTED CASE PROCEEDINGS IN WHICH THE STATE BOARD HAS ORIGINAL JURISDICTION TO COMMENCE A CONTESTED CASE PROCEEDING

2.17(421,17A) Applicability and scope
2.18(17A) Definitions
2.19(421,17A) Time requirements
2.20(421,17A) Notice of appeal
2.21(421,17A) Form of appeal
2.22(421,17A) Certification by director
2.23(421,17A) Answer
2.24(421,17A) Docketing
2.25(421,17A) Appearances by appellant
2.26(421,17A) Place of hearing
2.27(421,17A) Transcript of hearing
2.28(421,17A) Requests for contested case proceeding
2.29(421,17A) Notice of hearing
2.30(17A) Presiding officer

2.31(421,17A) Transfer of case for hearing or appeal
2.32(421,17A) Waiver of procedures
2.33(421,17A) Telephone proceedings
2.34(17A,421) Disqualifications of a presiding officer
2.35(421,17A) Consolidation and severance
2.36(17A) Service and filing of pleadings and other papers
2.37(421,17A) Discovery
2.38(421,17A) Subpoenas
2.39(421,17A) Motions
2.40(421,17A) Prehearing conference
2.41(421,17A) Continuances
2.42(17A) Withdrawals
2.43(421,17A) Intervention
2.44(421,17A) Hearing procedures
2.45(421,17A) Evidence
2.46(421,17A) Default or dismissal
2.47(421,17A) Ex parte communication
2.48(421,17A) Recording costs
2.49(421,17A) Interlocutory appeals
2.50(421,17A) Final decision
2.51(421,17A) Applications for rehearing
2.52(421,17A) Stays of agency and board actions
2.53(421,17A) No factual dispute contested case
2.54(421,17A) Appeal and review of a state board decision

CHAPTER 3
VOLUNTARY DISCLOSURE PROGRAM
3.1(421,422,423) Scope of the voluntary disclosure program

CHAPTER 4
MULTILEVEL MARKETER AGREEMENTS
4.1(421) Multilevel marketers—in general

CHAPTER 5
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES
(Uniform Rules)
5.1(17A,22) Definitions
5.3(17A,22) Requests for access to records
5.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records
5.9(17A,22) Disclosures without the consent of the subject
5.10(17A,22) Routine use
5.11(17A,22) Consensual disclosure of confidential records
5.12(17A,22) Release to subject
5.13(17A,22) Availability of records
5.14(17A,22) Personally identifiable information
5.15(17A,22) Other groups of records
5.16(17A,22) Applicability

TITLE I
ADMINISTRATION

CHAPTER 6
ORGANIZATION, PUBLIC INSPECTION

6.1(17A)	Establishment, organization, general course and method of operations, methods by which and location where the public may obtain information or make submissions or requests
6.2(17A)	Public inspection
6.3(17A)	Examination of records
6.4(17A)	Copies of proposed rules
6.5(17A)	Regulatory analysis procedures
6.6(422)	Retention of records and returns by the department
6.7(68B)	Consent to sell
6.8(421)	Tax return extension in disaster areas

CHAPTER 7
PRACTICE AND PROCEDURE BEFORE THE DEPARTMENT OF REVENUE

DIVISION I
INFORMAL, FORMAL, ADMINISTRATIVE AND JUDICIAL REVIEW PROCEDURES
APPLICABLE TO CONTESTED CASES AND OTHER PROCEEDINGS
COMMENCED PRIOR TO JULY 1, 1999

7.1(17A)	Definitions
7.2(17A)	Scope of rules
7.3(17A)	Business hours
7.4(17A)	Computation of time, filing of documents
7.5(17A)	Form and style of papers
7.6(17A)	Persons authorized to practice before the department
7.7(17A)	Resolution of tax liability
7.8(17A)	Protests
7.9(17A)	Identifying details
7.10(17A)	Docket
7.11(17A)	Informal procedures and dismissals of protests
7.12(17A)	Answer
7.13(17A)	Subpoenas
7.14(17A)	Commencement of contested case proceedings
7.15(17A)	Discovery
7.16(17A)	Prehearing conference
7.17(17A)	Contested case proceedings
7.18(17A)	Interventions
7.19(17A)	Record and transcript
7.20(17A)	Rehearing
7.21(17A)	Service
7.22	Reserved
7.23(17A)	Ex parte communications
7.24(17A)	Licenses
7.25(17A)	Declaratory rulings—in general
7.26(17A)	Department procedure for rule making—in general
7.27(9C,91C)	Procedure for nonlocal business entity bond forfeitures
7.28 and 7.29	Reserved
7.30(421)	Definitions which apply to rules 701—7.31(421) to 701—7.35(421)
7.31(421)	Abatement of unpaid tax

7.32(421) Time and place of taxpayer interviews
7.33(421) Mailing to the last-known address
7.34(421) Power of attorney
7.35(421) Taxpayer designation of tax type and period to which voluntary payments are to be applied

DIVISION II
INFORMAL, FORMAL, ADMINISTRATIVE AND JUDICIAL REVIEW PROCEDURES
APPLICABLE TO CONTESTED CASES AND OTHER PROCEEDINGS
COMMENCED ON OR AFTER JULY 1, 1999

7.36(421,17A) Applicability and scope of rules
7.37(421,17A) Definitions
7.38(421,17A) Applicability of rules set forth in Division I of Chapter 7
7.39(17A) Business hours
7.40(17A) Persons authorized to represent themselves or others
7.41(17A) Protest
7.42(17A) Identifying details
7.43(17A) Docket
7.44(17A) Informal procedures and dismissals of protests
7.45(17A) Answer
7.46(17A) Subpoenas
7.47(17A) Commencement of contested case proceedings
7.48(17A) Discovery
7.49(17A) Prehearing conference
7.50(17A) Contested case proceedings
7.51(17A) Record and transcript
7.52(17A) Rehearing
7.53(17A) Service
7.54(17A) Ex parte communications and disqualification
7.55(17A) Licenses
7.56(17A) Declaratory order—in general
7.57(17A) Department procedure for rule making
7.58(17A) Public inquiries on rule making and the rule-making records
7.59(17A) Criticism of rules

DIVISION III
WAIVER OR VARIANCE

7.60(78GA,HF2206) Waiver or variance of certain department rules

CHAPTER 8
FORMS AND COMMUNICATIONS

8.1(17A) Definitions
8.2(17A) Official forms
8.3(17A) Substitution of official forms
8.4(17A) Description of forms

CHAPTER 9
FILING AND EXTENSION OF TAX LIENS
AND CHARGING OFF UNCOLLECTIBLE TAX ACCOUNTS

9.1(422,423) Definitions
9.2(422,423) Lien attaches
9.3(422,423) Purpose of filing
9.4(422,423) Place of filing
9.5(422,423) Time of filing

9.6(422,423) Period of lien
9.7(422,423) Fees

CHAPTER 10
INTEREST, PENALTY, EXCEPTIONS TO PENALTY, AND JEOPARDY ASSESSMENTS

10.1(421) Definitions
10.2(421) Interest
10.3(422,450,452A) Interest on refunds
10.4(421) Frivolous return penalty
10.5 Reserved

PENALTY FOR TAX PERIOD BEGINNING AFTER JANUARY 1, 1991

10.6(421) Penalties
10.7(421) Waiver of penalty—definitions
10.8(421) Penalty exceptions
10.9(421) Notice of penalty exception for one late return in a three-year period
10.10 to 10.19 Reserved

RETAIL SALES

10.20(422,423) Penalty and interest computation
10.21(422,423) Request for waiver of penalty
10.22 to 10.29 Reserved

USE

10.30(423) Penalties for late filing of a monthly tax deposit or use tax returns
10.31 to 10.39 Reserved

INDIVIDUAL INCOME

10.40 to 10.49 Reserved

WITHHOLDING

10.50 to 10.55 Reserved

CORPORATE

10.56 to 10.65 Reserved

FINANCIAL INSTITUTIONS

10.66 to 10.70 Reserved

MOTOR FUEL

10.71(421) Penalty and enforcement provisions
10.72(452A) Interest
10.73 to 10.75 Reserved

CIGARETTES AND TOBACCO

10.76(453A) Penalties
10.77(453A) Interest
10.78 Reserved
10.79(453A) Request for statutory exception to penalty
10.80 to 10.84 Reserved

INHERITANCE

10.85(422) Penalty—delinquent returns and payment
10.86 to 10.89 Reserved

IOWA ESTATE

10.90(451) Penalty—delinquent return and payment
10.91 to 10.95 Reserved

GENERATION SKIPPING

10.96(450A) Penalty—delinquent return and payment for deaths occurring before January 1, 1991
10.97(422) Interest on tax due
10.98 to 10.100 Reserved

FIDUCIARY INCOME

10.101(422) Penalties
10.102(422) Penalty
10.103(422) Interest on unpaid tax
10.104 to 10.109 Reserved

HOTEL AND MOTEL

10.110(423A) Interest and penalty
10.111(423A) Request for waiver of penalty
10.112 to 10.114 Reserved

ALL TAXES

10.115(421) Application of payments to penalty, interest, and then tax due for payments made on or after January 1, 1995, unless otherwise designated by the taxpayer

JEOPARDY ASSESSMENTS

10.116(422,453B) Jeopardy assessments
10.117(422,453B) Procedure for posting bond
10.118(422,453B) Time limits
10.119(422,453B) Amount of bond
10.120(422,453B) Posting of bond
10.121(422,453B) Order
10.122(422,453B) Director's order
10.123(422,453B) Type of bond
10.124(422,453B) Form of surety bond
10.125(422,453B) Duration of the bond
10.126(422,453B) Exoneration of the bond

TITLE II
EXCISE

CHAPTER 11
ADMINISTRATION

11.1(422,423) Definitions
11.2(422,423) Statute of limitations
11.3(422,423) Credentials and receipts
11.4(422,423) Retailers required to keep records
11.5(422,423) Audit of records
11.6(422,423) Billings
11.7(422,423) Collections
11.8(422,423) No property exempt from distress and sale
11.9(422,423) Information confidential
11.10(422) Bonding procedure

CHAPTER 12
FILING RETURNS, PAYMENT OF TAX, PENALTY AND INTEREST

12.1(422) Returns and payment of tax
12.2(422,423) Remittances
12.3(422) Permits and negotiated rate agreements
12.4(422) Nonpermit holders

12.5(422,423) Regular permit holders responsible for collection of tax
12.6(422,423) Sale of business
12.7(422) Bankruptcy, insolvency or assignment for benefit of creditors
12.8(422) Vending machines and other coin-operated devices
12.9(422) Claim for refund of tax
12.10(423) Audit limitation for certain services
12.11 Reserved
12.12(422) Extension of time for filing
12.13(422) Determination of filing status
12.14(422,423) Immediate successor liability for unpaid tax
12.15(422,423) Officers and partners—personal liability for unpaid tax
12.16(422) Show sponsor liability
12.17(422) Purchaser liability for unpaid sales tax

CHAPTER 13
PERMITS

13.1(422) Retail sales tax permit required
13.2(422) Application for permit
13.3(422) Permit not transferable—sale of business
13.4(422) Permit—consolidated return optional
13.5(422) Retailers operating a temporary business
13.6(422) Reinstatement of canceled permit
13.7(422) Reinstatement of revoked permit
13.8(422) Withdrawal of permit
13.9(422) Loss or destruction of permit
13.10(422) Change of location
13.11(422) Change of ownership
13.12(422) Permit posting
13.13(422) Trustees, receivers, executors and administrators
13.14(422) Vending machines and other coin-operated devices
13.15(422) Other amusements
13.16(422) Substantially delinquent tax—denial of permit
13.17(422) Substantially delinquent tax—revocation of permit

CHAPTER 14
COMPUTATION OF TAX

14.1(422) Tax not to be included in price
14.2(422,423,77GA,ch1130) Retail bracket system for state sales and local option sales and service tax
14.3(422,423) Taxation of transactions due to rate change

CHAPTER 15
DETERMINATION OF A SALE AND SALE PRICE

15.1(422) Conditional sales to be included in gross sales
15.2(422,423) Repossessed goods
15.3(422,423) Exemption certificates, direct pay permits, fuel used in processing, and beer and wine wholesalers
15.4(422,423) Bad debts
15.5(422,423) Recovery of bad debts by collection agency or attorney
15.6(422,423) Discounts, rebates and coupons
15.7 Reserved
15.8(422,423) Returned merchandise
15.9(422) Goods damaged in transit
15.10(422) Consignment sales

15.11(422,423) Leased departments
15.12(422,423) Excise tax included in and excluded from gross receipts
15.13(422,423) Freight, other transportation charges, and exclusions from the exemption applicable to these services
15.14(422,423) Installation charges when tangible personal property is sold at retail
15.15(422) Premiums and gifts
15.16(422) Gift certificates
15.17(422,423) Finance charge
15.18(422,423) Coins and other currency exchanged at greater than face value
15.19(422,423) Trade-ins
15.20(422,423) Corporate mergers which do not involve taxable sales of tangible personal property or services

CHAPTER 16
TAXABLE SALES

16.1(422) Tax imposed
16.2(422) Used or secondhand tangible personal property
16.3(422,423) Tangible personal property used or consumed by the manufacturer thereof
16.4(422,423) Patterns, dies, jigs, tools, and manufacturing or printing aids
16.5(422,423) Explosives used in mines, quarries and elsewhere
16.6(422,423) Electrotypes, types, zinc etchings, halftones, stereotypes, color process plates and wood mounts
16.7 Reserved
16.8(422,423) Wholesalers and jobbers selling at retail
16.9(422,423) Materials and supplies sold to retail stores
16.10(422,423) Sales to certain corporations organized under federal statutes
16.11(422,423) Paper plates, paper cups, paper dishes, paper napkins, paper, wooden or plastic spoons and forks and straws
16.12(422) Tangible personal property purchased for resale but incidentally consumed by the purchaser
16.13(422) Property furnished without charge by employers to employees
16.14(422) Sales in interstate commerce—goods delivered into this state
16.15(422) Owners or operators of buildings
16.16(422,423) Tangible personal property made to order
16.17(422,423) Blacksmith and machine shops
16.18(422,423) Sales of signs at retail
16.19(422,423) Products sold by cooperatives to members or patrons
16.20(422,423) Municipal utilities, investor-owned utilities, or municipal or rural electrification cooperatives or associations
16.21(422,423) Sale of pets
16.22(422,423) Sales on layaway
16.23(422) Meal tickets, coupon books, and merchandise cards
16.24(422,423) Truckers engaged in retail business
16.25(422,423) Foreign truckers selling at retail in Iowa
16.26(422) Admissions to amusements, athletic events, commercial amusement enterprises, fairs, and games
16.27 and 16.28 Reserved
16.29(422) Rental of personal property in connection with the operation of amusements
16.30(422) Commercial amusement enterprises—companies or persons which contract to furnish show for fixed fee
16.31 Reserved
16.32(422) River steamboats

16.33(422) Pawnbrokers
16.34(422,423) Druggists and pharmacists
16.35(422,423) Memorial stones
16.36(422) Communication services furnished by hotel to its guests
16.37(422) Private clubs
16.38 Reserved
16.39(422) Athletic events
16.40(422,423) Iowa dental laboratories
16.41(422,423) Dental supply houses
16.42(422) News distributors and magazine distributors
16.43(422,423) Magazine subscriptions by independent dealers
16.44(422,423) Sales by finance companies
16.45(422,423) Sale of baling wire and baling twine
16.46(422,423) Snowmobiles and motorboats
16.47(422) Conditional sales contracts
16.48(422,423) Carpeting and other floor coverings
16.49(422,423) Bowling
16.50(422,423) Various special problems relating to public utilities
16.51(422,423) Sales of services treated as sales of tangible personal property
16.52(422,423) Sales of prepaid merchandise cards

CHAPTER 17
EXEMPT SALES

17.1(422,423) Gross receipts expended for educational, religious, and charitable purposes
17.2(422) Fuel used in processing—when exempt
17.3(422,423) Processing exemptions
17.4(422,423) Commercial fertilizer and agricultural limestone
17.5(422,423) Sales to the American Red Cross, the Coast Guard Auxiliary, Navy-Marine Corps Relief Society, and U.S.O
17.6(422,423) Sales of vehicles subject to registration—new and used—by dealers
17.7(422,423) Sales to certain federal corporations
17.8(422) Sales in interstate commerce—goods transported or shipped from this state
17.9(422,423) Sales of breeding livestock, fowl and certain other property used in agricultural production
17.10(422,423) Materials used for seed inoculations
17.11(422,423) Educational institution
17.12(422) Coat or hat checkrooms
17.13(422,423) Railroad rolling stock
17.14(422,423) Chemicals, solvents, sorbents, or reagents used in processing
17.15(422,423) Demurrage charges
17.16(422,423) Sale of a draft horse
17.17(422,423) Beverage container deposits
17.18(422,423) Films, video tapes and other media, exempt rental and sale
17.19(422,423) Gross receipts from the sale or rental of tangible personal property or from services performed, rendered, or furnished to certain nonprofit corporations exempt from tax
17.20(422) Raffles
17.21(422) Exempt sales of prizes
17.22(422,423) Modular homes
17.23(422,423) Sales to other states and their political subdivisions
17.24(422) Nonprofit private museums
17.25(422,423) Exempt sales by excursion boat licensees

17.26(422,423) Bedding for agricultural livestock or fowl
17.27(422,423) Statewide notification center service exemption
17.28(422,423) State fair and fair societies
17.29(422,423) Reciprocal shipment of wines
17.30(422,423) Nonprofit organ procurement organizations
17.31(422,423) Sale of electricity to water companies
17.32(422) Food and beverages sold by certain organizations are exempt
17.33(422,423) Sales of building materials, supplies and equipment to not-for-profit rural water districts
17.34(422,423) Sales to hospices
17.35(422,423) Sales of livestock ear tags
17.36(422,423) Sale or rental of information services
17.37(422,423) Temporary exemption from sales tax on certain utilities
17.38(422,423) State sales tax phase-out on energies
17.39(422,423) Art centers
17.40(422,423) Community action agencies
17.41(422,423) Legislative service bureau

CHAPTER 18
TAXABLE AND EXEMPT SALES DETERMINED BY METHOD
OF TRANSACTION OR USAGE

18.1(422,423) Tangible personal property purchased from the United States government
18.2(422,423) Sales of butane, propane and other like gases in cylinder drums, etc.
18.3(422,423) Chemical compounds used to treat water
18.4(422) Mortgages and trustees
18.5(422,423) Sales to agencies or instrumentalities of federal, state, county and municipal government
18.6(422,423) Relief agencies
18.7(422,423) Containers, including packing cases, shipping cases, wrapping material and similar items
18.8(422) Auctioneers
18.9(422) Sales by farmers
18.10(422,423) Florists
18.11(422,423) Landscaping materials
18.12(422,423) Hatcheries
18.13(422,423) Sales by the state of Iowa, its agencies and instrumentalities
18.14(422,423) Sales of livestock and poultry feeds
18.15(422,423) Student fraternities and sororities
18.16(422,423) Photographers and photostaters
18.17(422,423) Gravel and stone
18.18(422,423) Sale of ice
18.19(422,423) Antiques, curios, old coins or collector's postage stamps
18.20(422,423) Communication services
18.21(422,423) Morticians or funeral directors
18.22(422,423) Physicians, dentists, surgeons, ophthalmologists, oculists, optometrists, and opticians
18.23(422) Veterinarians
18.24(422,423) Hospitals, infirmaries and sanitariums
18.25(422,423) Warranties and maintenance contracts
18.26(422) Service charge and gratuity
18.27(422) Advertising agencies, commercial artists, and designers
18.28(422,423) Casual sales

18.29(422,423) Processing, a definition of the word, its beginning and completion characterized with specific examples of processing
18.30(422) Taxation of American Indians
18.31(422,423) Tangible personal property purchased by one who is engaged in the performance of a service
18.32(422,423) Sale, transfer or exchange of tangible personal property or taxable enumerated services between affiliated corporations
18.33(422,423) Printers' and publishers' supplies exemption with retroactive effective date
18.34(422,423) Automatic data processing
18.35(422,423) Drainage tile
18.36(422,423) True leases and purchases of tangible personal property by lessors
18.37(422,423) Motor fuel, special fuel, aviation fuels and gasoline
18.38(422,423) Urban transit systems
18.39(422,423) Sales or services rendered, furnished, or performed by a county or city
18.40(422,423) Renting of rooms
18.41(422,423) Envelopes for advertising
18.42(422,423) Newspapers, free newspapers and shoppers' guides
18.43(422,423) Written contract
18.44(422,423) Sale or rental of farm machinery and equipment
18.45(422,423) Sale or rental of computers, industrial machinery and equipment; refund of and exemption from tax paid for periods prior to July 1, 1997
18.46(422,423) Automotive fluids
18.47(422,423) Maintenance or repair of fabric or clothing
18.48(422,423) Sale or rental of farm machinery, equipment, replacement parts, and repairs used in livestock, dairy, or plant production
18.49(422,423) Aircraft sales, rental, component parts, and services exemptions prior to, on, and after July 1, 1999
18.50(422,423) Property used by a lending organization
18.51(422,423) Sales to nonprofit legal aid organizations
18.52(422,423) Irrigation equipment used in farming operations
18.53(422,423) Sales to persons engaged in the consumer rental purchase business
18.54(422,423) Sales of advertising material
18.55(422,423) Drop shipment sales
18.56(422,423) Wind energy conversion property
18.57(422,423) Exemptions applicable to the production of flowering, ornamental, and vegetable plants
18.58(422,423) Exempt sales or rentals of computers, industrial machinery and equipment, and exempt sales of fuel and electricity on and after July 1, 1997
18.59(422,423) Exempt sales to nonprofit hospitals
18.60(422,423) Exempt sales of gases used in the manufacturing process
18.61(422,423) Exclusion from tax for property delivered by certain media

CHAPTER 19
SALES AND USE TAX ON CONSTRUCTION ACTIVITIES

19.1(422,423) General information
19.2(422,423) Contractors are consumers of building materials, supplies, and equipment by statute
19.3(422,423) Sales of building materials, supplies, and equipment to contractors, subcontractors, builders or owners
19.4(422,423) Contractors, subcontractors or builders who are retailers
19.5(422,423) Building materials, supplies, and equipment used in the performance of construction contracts within and outside Iowa
19.6(422,423) Prefabricated structures

19.7(422,423) Types of construction contracts
19.8(422,423) Machinery and equipment sales contracts with installation
19.9(422,423) Construction contracts with equipment sales (mixed contracts)
19.10(422,423) Distinguishing machinery and equipment from real property
19.11(422,423) Tangible personal property which becomes structures
19.12(422,423) Construction contracts with tax exempt entities
19.13(422,423) Tax on enumerated services
19.14(422,423) Transportation cost
19.15(422,423) Start-up charges
19.16(422,423) Liability of subcontractors
19.17(422,423) Liability of sponsors
19.18(422,423) Withholding
19.19(422,423) Resale certificates
19.20(423) Reporting for use tax

CHAPTER 20
FOODS FOR HUMAN CONSUMPTION, PRESCRIPTION DRUGS, INSULIN, HYPODERMIC SYRINGES, DIABETIC TESTING MATERIALS, PROSTHETIC, ORTHOTIC OR ORTHOPEDIC DEVICES

20.1(422,423) Foods for human consumption
20.2(422,423) Food coupon rules
20.3(422,423) Nonparticipating retailer in the food coupon program
20.4(422,423) Determination of eligible foods
20.5(422,423) Meals and prepared food
20.6(422,423) Vending machines
20.7(422,423) Prescription drugs and devices
20.8(422,423) Exempt sales of nonprescription medical devices, other than prosthetic devices
20.9(422,423) Prosthetic, orthotic and orthopedic devices
20.10(422,423) Sales and rentals covered by Medicaid and Medicare
20.11(422,423) Reporting
20.12(422,423) Exempt sales of clothing and footwear during two-day period in August

CHAPTERS 21 to 25
Reserved

TITLE III
SALES TAX ON SERVICES

CHAPTER 26
SALES AND USE TAX ON SERVICES

26.1(422) Definition and scope
26.2(422) Enumerated services exempt
26.3(422) Alteration and garment repair
26.4(422) Armored car
26.5(422) Vehicle repair
26.6(422) Battery, tire and allied
26.7(422) Investment counseling
26.8(422) Bank and financial institution service charges
26.9(422) Barber and beauty
26.10(422) Boat repair
26.11(422) Car and vehicle wash and wax
26.12(422) Carpentry
26.13(422) Roof, shingle and glass repair
26.14(422) Dance schools and dance studios

26.15(422)	Dry cleaning, pressing, dyeing and laundering
26.16(422)	Electrical and electronic repair and installation
26.17(422)	Engraving, photography and retouching
26.18(422,423)	Equipment and tangible personal property rental
26.19(422)	Excavating and grading
26.20(422)	Farm implement repair of all kinds
26.21(422)	Flying service
26.22(422)	Furniture, rug, upholstery, repair and cleaning
26.23(422)	Fur storage and repair
26.24(422)	Golf and country clubs and all commercial recreation
26.25(422)	House and building moving
26.26(422)	Household appliance, television and radio repair
26.27(422)	Jewelry and watch repair
26.28(422)	Machine operators
26.29(422)	Machine repair of all kinds
26.30(422)	Motor repair
26.31(422)	Motorcycle, scooter and bicycle repair
26.32(422)	Oilers and lubricators
26.33(422)	Office and business machine repair
26.34(422)	Painting, papering and interior decorating
26.35(422)	Parking facilities
26.36(422)	Pipe fitting and plumbing
26.37(422)	Wood preparation
26.38(422)	Private employment agency, executive search agency
26.39(422)	Printing and binding
26.40(422)	Sewing and stitching
26.41(422)	Shoe repair and shoeshine
26.42(422)	Storage warehousing, storage locker, and storage warehousing of raw agricultural products and household goods
26.43(422)	Telephone answering service
26.44(422)	Test laboratories
26.45(422)	Termite, bug, roach, and pest eradicators
26.46(422)	Tin and sheet metal repair
26.47(422)	Turkish baths, massage, and reducing salons
26.48(422)	Vulcanizing, recapping or retreading
26.49	Reserved
26.50(422)	Weighing
26.51(422)	Welding
26.52(422)	Well drilling
26.53(422)	Wrapping, packing and packaging of merchandise other than processed meat, fish, fowl and vegetables
26.54(422)	Wrecking service
26.55(422)	Wrecker and towing
26.56(422)	Cable and pay television
26.57(422)	Camera repair
26.58(422)	Campgrounds
26.59(422)	Gun repair
26.60(422)	Janitorial and building maintenance or cleaning
26.61(422)	Lawn care
26.62(422)	Landscaping
26.63(422)	Pet grooming
26.64(422)	Reflexology

26.65(422) Tanning beds and tanning salons
26.66(422) Tree trimming and removal
26.67(422) Water conditioning and softening
26.68(422) Motor vehicle, recreational vehicle and recreational boat rental
26.69(422) Security and detective services
26.70 Reserved
26.71(422,423) Solid waste collection and disposal services
26.72(422,423) Sewage services
26.73 Reserved
26.74(422,423) Aircraft rental
26.75(422,423) Sign construction and installation
26.76(422,423) Swimming pool cleaning and maintenance
26.77(422,423) Taxidermy
26.78(422,423) Mini-storage
26.79(422,423) Dating services
26.80(422,423) Limousine service
26.81(422) Sales of bundled services contracts

CHAPTER 27
AUTOMOBILE RENTAL EXCISE TAX

27.1(422,422C,423) Definitions and characterizations
27.2(422,422C,423) Tax imposed upon rental of automobiles
27.3(422,422C,423) Lessor's obligation to collect tax
27.4(422,422C,423) Administration of tax

TITLE IV
USE

CHAPTER 28
DEFINITIONS

28.1(423) Taxable use defined
28.2(423) Processing of property defined
28.3(423) Purchase price defined
28.4(423) Retailer maintaining a place of business in this state defined

CHAPTER 29
CERTIFICATES

29.1(423) Certificate of registration
29.2(423) Cancellation of certificate of registration
29.3(423) Certificates of resale, direct pay permits, or processing

CHAPTER 30
FILING RETURNS, PAYMENT OF TAX, PENALTY AND INTEREST

30.1(423) Liability for use tax and denial and revocation of permit
30.2(423) Measure of use tax
30.3(421,423) Consumer's use tax return
30.4(423) Retailer's use tax return
30.5(423) Collection requirements of registered retailers
30.6(423) Bracket system to be used by registered vendors
30.7(423) Sales tax or use tax paid to another state
30.8(423) Registered retailers selling tangible personal property on a conditional sale contract basis
30.9(423) Registered vendors repossessing goods sold on a conditional sale contract basis
30.10(423) Penalties for late filing of a monthly tax deposit or use tax returns

30.11(423) Claim for refund of use tax
30.12(423) Extension of time for filing

CHAPTER 31
RECEIPTS SUBJECT TO USE TAX
31.1(423) Transactions consummated outside this state
31.2(423) Goods coming into this state
31.3(423) Sales by federal government or agencies to consumers
31.4(423) Sales for lease of vehicles subject to registration—taxation and exemptions
31.5(423) Motor vehicle use tax on long-term leases
31.6(423) Sales of aircraft subject to registration
31.7(423) Communication services

CHAPTER 32
RECEIPTS EXEMPT FROM USE TAX
32.1(423) Tangible personal property and taxable services subject to sales tax
32.2(423) Sales tax exemptions applicable to use tax
32.3(423) Mobile homes and manufactured housing
32.4(423) Exemption for vehicles used in interstate commerce
32.5(423) Exemption for transactions if sales tax paid
32.6(423) Exemption for ships, barges, and other waterborne vessels
32.7(423) Exemption for containers
32.8(423) Exemption for building materials used outside this state
32.9(423) Exemption for vehicles subject to registration
32.10(423) Exemption for vehicles operated under Iowa Code chapter 326
32.11(423) Exemption for vehicles purchased for rental or lease
32.12(423) Exemption for vehicles previously purchased for rental
32.13(423) Exempt use of aircraft on and after July 1, 1999

CHAPTER 33
RECEIPTS SUBJECT TO USE TAX DEPENDING ON
METHOD OF TRANSACTION
33.1 Reserved
33.2(423) Federal manufacturer's or retailer's excise tax
33.3(423) Fuel consumed in creating power, heat or steam for processing or generating electric current
33.4(423) Repair of tangible personal property outside the state of Iowa
33.5(423) Taxation of American Indians
33.6(422,423) Exemption for property used in Iowa only in interstate commerce
33.7(423) Property used to manufacture certain vehicles to be leased
33.8(423) Out-of-state rental of vehicles subject to registration subsequently used in Iowa
33.9(423) Sales of mobile homes, manufactured housing, and related property and services
33.10(423) Tax imposed on the use of manufactured housing as tangible personal property and as real estate

CHAPTER 34
VEHICLES SUBJECT TO REGISTRATION
34.1(422,423) Definitions
34.2(423) County treasurer shall collect tax
34.3(423) Returned vehicles and tax refunded by manufacturers
34.4(423) Use tax collections required
34.5(423) Exemptions
34.6(423) Vehicles subject to registration received as gifts or prizes

34.7(423) Titling of used foreign vehicles by dealers
34.8(423) Dealer's retail sales tax returns
34.9(423) Affidavit forms
34.10(423) Exempt and taxable purchases of vehicles for taxable rental
34.11(423) Manufacturer's refund of use tax to a consumer, lessor, or lessee of a defective motor vehicle
34.12(423) Government payments for a motor vehicle which do not involve government purchases of the same
34.13(423) Transfers of vehicles resulting from corporate mergers and other types of corporate transfers
34.14(423) Refund of use tax paid on the purchase of a motor vehicle
34.15(423) Registration by manufacturers
34.16(423) Rebates
34.17(321,423) Repossession of a vehicle
34.18(423) Federal excise tax
34.19(423) Claiming an exemption from Iowa tax
34.20(423) Affidavit forms
34.21(423) Insurance companies

CHAPTERS 35 and 36
Reserved

CHAPTER 37
UNDERGROUND STORAGE TANK RULES
INCORPORATED BY REFERENCE
37.1(424) Rules incorporated

TITLE V
INDIVIDUAL

CHAPTER 38
ADMINISTRATION
38.1(422) Definitions
38.2(422) Statute of limitations
38.3(422) Retention of records
38.4(422) Authority for deductions
38.5(422) Jeopardy assessments
38.6(422) Information deemed confidential
38.7(422) Power of attorney
38.8(422) Delegations to audit and examine
38.9(422) Bonding procedure
38.10(422) Indexation
38.11(422) Appeals of notices of assessment and notices of denial of taxpayer's refund claims
38.12(422) Indexation of the optional standard deduction for inflation
38.13(422) Reciprocal tax agreements
38.14(422) Information returns for reporting income payments to the department of revenue
38.15(422) Relief of innocent spouse for substantial understatement of tax attributable to other spouse
38.16(422) Preparation of taxpayers' returns by department employees
38.17(422) Resident determination
38.18(422) Tax treatment of income repaid in current tax year which had been reported on prior Iowa individual income tax return
38.19(422) Indication of dependent child health care coverage on tax return

CHAPTER 39
FILING RETURN AND PAYMENT OF TAX

39.1(422)	Who must file
39.2(422)	Time and place for filing
39.3(422)	Form for filing
39.4(422)	Filing status
39.5(422)	Payment of tax
39.6(422)	Minimum tax
39.7(422)	Tax on lump-sum distributions
39.8(422)	State income tax limited to taxpayer's net worth immediately before the distressed sale
39.9(422)	Special tax computation for all low-income taxpayers except single taxpayers
39.10(422)	Election to report excess income from sale or exchange of livestock due to drought in the next tax year
39.11(422)	Forgiveness of tax for an individual whose federal income tax was forgiven because the individual was killed outside the United States due to military or terroristic action
39.12(422)	Tax benefits for persons in the armed forces serving in a combat zone or a qualified hazardous duty area or deployed outside the United States in a contingency operation
39.13(422)	Electronic filing of Iowa individual income tax returns
39.14(422)	Tax benefits for persons serving in support of the Bosnia-Herzegovina hazardous duty area
39.15(422)	Special tax computation for taxpayers who are 65 years of age or older

CHAPTER 40
DETERMINATION OF NET INCOME

40.1(422)	Net income defined
40.2(422)	Interest and dividends from federal securities
40.3(422)	Interest and dividends from foreign securities, and securities of state and their political subdivisions
40.4	Reserved
40.5(422)	Military pay
40.6(422)	Interest and dividend income
40.7(422)	Current year capital gains and losses
40.8(422)	Gains and losses on property acquired before January 1, 1934
40.9(422)	Work opportunity tax credit and alcohol fuel credit
40.10 and 40.11	Reserved
40.12(422)	Income from partnerships or limited liability companies
40.13(422)	Subchapter "S" income
40.14(422)	Contract sales
40.15(422)	Reporting of incomes by married taxpayers who file a joint federal return but elect to file separately for Iowa income tax purposes
40.16(422)	Income of nonresidents
40.17(422)	Income of part-year residents
40.18(422)	Net operating loss carrybacks and carryovers
40.19(422)	Casualty losses
40.20(422)	Adjustments to prior years
40.21(422)	Additional deduction for wages paid or accrued for work done in Iowa by certain individuals
40.22(422)	Disability income exclusion
40.23(422)	Social security benefits

40.24(99E)	Lottery prizes
40.25 and 40.26	Reserved
40.27(422)	Incomes from distressed sales of qualifying taxpayers
40.28	Reserved
40.29(422)	Intangible drilling costs
40.30(422)	Percentage depletion
40.31(422)	Away-from-home expenses of state legislators
40.32(422)	Interest and dividends from regulated investment companies which are exempt from federal income tax
40.33	Reserved
40.34(422)	Exemption of restitution payments for persons of Japanese ancestry
40.35(422)	Exemption of Agent Orange settlement proceeds received by disabled veterans or beneficiaries of disabled veterans
40.36(422)	Exemption of interest earned on bonds issued to finance beginning farmer loan program
40.37(422)	Exemption of interest from bonds issued by the Iowa comprehensive petroleum underground storage tank fund board
40.38(422)	Capital gains deduction or exclusion for certain types of net capital gains
40.39(422)	Exemption of interest from bonds or notes issued to fund the E911 emergency telephone system
40.40(422)	Exemption of active-duty military pay of national guard personnel and armed forces reserve personnel received for services related to operation desert shield
40.41	Reserved
40.42(422)	Depreciation of speculative shell buildings
40.43(422)	Retroactive exemption for payments received for providing unskilled in-home health care services to a relative
40.44(422,541A)	Individual development accounts
40.45(422)	Exemption for distributions from pensions, annuities, individual retirement accounts, or deferred compensation plans received by nonresidents of Iowa
40.46(422)	Taxation of compensation of nonresident members of professional athletic teams
40.47(422)	Partial exclusion of pensions and other retirement benefits for disabled individuals, individuals who are 55 years of age or older, surviving spouses, and survivors
40.48(422)	Health insurance premiums deduction
40.49(422)	Employer social security credit for tips
40.50(422)	Computing state taxable amounts of pension benefits from state pension plans
40.51(422)	Exemption of active-duty military pay of national guard personnel and armed forces military reserve personnel for overseas services pursuant to military orders for peacekeeping in the Bosnia-Herzegovina area
40.52(422)	Mutual funds
40.53(422)	Deduction for contributions by taxpayers to the Iowa educational savings plan trust and addition to income for refunds of contributions previously deducted
40.54(422)	Roth individual retirement accounts
40.55(422)	Exemption of income payments for victims of the Holocaust and heirs of victims
40.56(422)	Taxation of income from the sale of obligations of the state of Iowa and its political subdivisions
40.57(422)	Installment sales by taxpayers using the accrual method of accounting
40.58(422)	Exclusion of distributions from retirement plans by national guard members and members of military reserve forces of the United States
40.59(422)	Exemption of payments received by a beneficiary from an annuity purchased under an employee's retirement plan when the installment has been included as part of a decedent employee's estate
40.60(422)	Additional first-year depreciation allowance

40.61(422) Exclusion of active duty pay of national guard members and armed forces military reserve members for service under orders for Operation Iraqi Freedom, Operation Noble Eagle or Operation Enduring Freedom
40.62(422) Deduction for overnight expenses not reimbursed for travel away from home of more than 100 miles for performance of service as a member of the national guard or armed forces military reserve
40.63(422) Exclusion of income from military student loan repayments
40.64(422) Exclusion of death gratuity payable to an eligible survivor of a member of the armed forces, including a member of a reserve component of the armed forces who has died while on active duty
40.65(422) Section 179 expensing
40.66(422) Deduction for certain unreimbursed expenses relating to a human organ transplant
40.67(422) Deduction for alternative motor vehicles
40.68(422) Injured veterans grant program
40.69(422) Exclusion of ordinary or capital gain income realized as a result of involuntary conversion of property due to eminent domain
40.70(422) Exclusion of income from sale, rental or furnishing of tangible personal property or services directly related to production of film, television or video projects
40.71(422) Exclusion for certain victim compensation payments
40.72(422) Exclusion of Vietnam Conflict veterans bonus

CHAPTER 41
DETERMINATION OF TAXABLE INCOME

41.1(422) Verification of deductions required
41.2(422) Federal rulings and regulations
41.3(422) Federal income tax deduction and federal refund
41.4(422) Optional standard deduction
41.5(422) Itemized deductions
41.6(422) Itemized deductions—separate returns by spouses
41.7(422) Itemized deductions—part-year residents
41.8(422) Itemized deductions—nonresidents
41.9(422) Annualizing income
41.10(422) Income tax averaging
41.11(422) Reduction in state itemized deductions for certain high-income taxpayers
41.12(422) Deduction for home mortgage interest for taxpayers with mortgage interest credit
41.13(422) Iowa income taxes and Iowa tax refund

CHAPTER 42
ADJUSTMENTS TO COMPUTED TAX

42.1(257,442) School district surtax
42.2(422) Exemption, research activities, earned income, and investment tax credits
42.3(422) Nonresident and part-year resident credit
42.4(422) Out-of-state tax credits
42.5(422) Withholding and estimated tax credits
42.6(422) Motor fuel credit
42.7(422) Out-of-state tax credit for minimum tax
42.8(422) Alternative minimum tax credit for minimum tax paid in a prior tax year
42.9(422) Child and dependent care credit
42.10 Reserved
42.11(422D) Emergency medical services income surtax
42.12(422) Franchise tax credit
42.13(15E) Eligible housing business tax credit

42.14(422) Assistive device tax credit
42.15(422) Historic preservation and cultural and entertainment district tax credit
42.16(422) Ethanol blended gasoline tax credit
42.17(15E) Eligible development business investment tax credit
42.18(15E,422) Venture capital credits
42.19(15) New capital investment program tax credits
42.20(15E) Endow Iowa tax credit
42.21(422) Soy-based cutting tool oil tax credit
42.22(422) Tuition and textbook credit for expenses incurred for dependents attending grades kindergarten through 12 in Iowa
42.23(422) Deduction of credits
42.24(15I,422) Wage-benefits tax credit
42.25(422,476B) Wind energy production tax credit
42.26(422,476C) Renewable energy tax credit
42.27(15) High quality job creation program
42.28(15E,422) Economic development region revolving fund tax credit
42.29(422) Early childhood development tax credit
42.30(422) School tuition organization tax credit
42.31(422) E-85 gasoline promotion tax credit
42.32(422) Biodiesel blended fuel tax credit
42.33(422) Soy-based transformer fluid tax credit
42.34(175,422) Agricultural assets transfer tax credit
42.35(15,422) Film qualified expenditure tax credit
42.36(15,422) Film investment tax credit
42.37(422) Ethanol promotion tax credit
42.38(422) Charitable conservation contribution tax credit

CHAPTER 43
ASSESSMENTS AND REFUNDS

43.1(422) Notice of discrepancies
43.2(422) Notice of assessment, supplemental assessments and refund adjustments
43.3(422) Overpayments of tax
43.4(68A,422,456A) Optional designations of funds by taxpayer
43.5(422) Abatement of tax
43.6 and 43.7 Reserved
43.8(422) Livestock production credit refunds for corporate taxpayers and individual taxpayers

CHAPTER 44
PENALTY AND INTEREST

44.1(422) Penalty
44.2(422) Computation of interest on unpaid tax
44.3(422) Computation of interest on refunds resulting from net operating losses
44.4(422) Computation of interest on overpayments

CHAPTER 45
PARTNERSHIPS

45.1(422) General rule
45.2(422) Partnership returns
45.3(422) Contents of partnership return
45.4(422) Distribution and taxation of partnership income

CHAPTER 46
WITHHOLDING

46.1(422) Who must withhold
46.2(422) Computation of amount withheld
46.3(422) Forms, returns and reports
46.4(422) Withholding on nonresidents
46.5(422) Penalty and interest
46.6(422) Withholding tax credit to workforce development fund
46.7(422) ACE training program credits from withholding
46.8(260E) New job tax credit from withholding
46.9(15) Supplemental new jobs credit from withholding and alternative credit for housing assistance programs
46.10(403) Targeted jobs withholding tax credit

CHAPTER 47
Reserved

CHAPTER 48
COMPOSITE RETURNS

48.1(422) Composite returns
48.2(422) Definitions
48.3(422) Filing requirements
48.4 Reserved
48.5(422) The director may in accordance with rule 701—48.3(422) require the filing of a composite return under the following conditions
48.6(422) Determination of composite Iowa income
48.7(422) Determination of composite Iowa tax
48.8(422) Estimated tax
48.9(422) Time and place for filing

CHAPTER 49
ESTIMATED INCOME TAX FOR INDIVIDUALS

49.1(422) Who must pay estimated income tax
49.2(422) Time for filing and payment of tax
49.3(422) Estimated tax for nonresidents
49.4(422) Special estimated tax periods
49.5(422) Reporting forms
49.6(422) Penalty—underpayment of estimated tax
49.7(422) Estimated tax carryforwards and how the carryforward amounts are affected under different circumstances

CHAPTER 50
APPORTIONMENT OF INCOME FOR RESIDENT
SHAREHOLDERS OF S CORPORATIONS

50.1(422) Apportionment of income for resident shareholders of S corporations
50.2(422) Definitions
50.3(422) Distributions
50.4(422) Computation of net S corporation income
50.5(422) Computation of federal tax on S corporation income
50.6(422) Income allocable to Iowa
50.7(422) Credit for taxes paid to another state
50.8(422) Refunds

50.9(422) Examples for tax periods beginning prior to January 1, 2002
50.10(422) Example for tax periods beginning on or after January 1, 2002

TITLE VI
CORPORATION

CHAPTER 51
ADMINISTRATION

51.1(422) Definitions
51.2(422) Statutes of limitation
51.3(422) Retention of records
51.4(422) Cancellation of authority to do business
51.5(422) Authority for deductions
51.6(422) Jeopardy assessments
51.7(422) Information confidential
51.8(422) Power of attorney
51.9(422) Delegation of authority to audit and examine

CHAPTER 52
FILING RETURNS, PAYMENT OF TAX AND
PENALTY AND INTEREST

52.1(422) Who must file
52.2(422) Time and place for filing return
52.3(422) Form for filing
52.4(422) Payment of tax
52.5(422) Minimum tax
52.6(422) Motor fuel credit
52.7(422) Research activities credit
52.8(422) New jobs credit
52.9 Reserved
52.10(15) New jobs and income program tax credits
52.11(422) Refunds and overpayments
52.12(422) Deduction of credits
52.13(422) Livestock production credits
52.14(15E) Enterprise zone tax credits
52.15(15E) Eligible housing business tax credit
52.16(422) Franchise tax credit
52.17(422) Assistive device tax credit
52.18(422) Historic preservation and cultural and entertainment district tax credit
52.19(422) Ethanol blended gasoline tax credit
52.20(15E) Eligible development business investment tax credit
52.21(15E,422) Venture capital credits
52.22(15) New capital investment program tax credits
52.23(15E) Endow Iowa tax credit
52.24(422) Soy-based cutting tool oil tax credit
52.25(15I,422) Wage-benefits tax credit
52.26(422,476B) Wind energy production tax credit
52.27(422,476C) Renewable energy tax credit
52.28(15) High quality job creation program
52.29(15E,422) Economic development region revolving fund tax credit
52.30(422) E-85 gasoline promotion tax credit
52.31(422) Biodiesel blended fuel tax credit
52.32(422) Soy-based transformer fluid tax credit

52.33(175,422) Agricultural assets transfer tax credit
52.34(15,422) Film qualified expenditure tax credit
52.35(15,422) Film investment tax credit
52.36(422) Ethanol promotion tax credit
52.37(422) Charitable conservation contribution tax credit

CHAPTER 53
DETERMINATION OF NET INCOME

53.1(422) Computation of net income for corporations
53.2(422) Net operating loss carrybacks and carryovers
53.3(422) Capital loss carryback
53.4(422) Net operating and capital loss carrybacks and carryovers
53.5(422) Interest and dividends from federal securities
53.6(422) Interest and dividends from foreign securities, and securities of state and their political subdivisions
53.7(422) Safe harbor leases
53.8(422) Additions to federal taxable income
53.9(422) Gains and losses on property acquired before January 1, 1934
53.10(422) Work opportunity tax and alcohol fuel credit
53.11(422) Additional deduction for wages paid or accrued for work done in Iowa by certain individuals
53.12(422) Federal income tax deduction
53.13(422) Iowa income taxes and Iowa tax refund
53.14(422) Method of accounting, accounting period
53.15(422) Consolidated returns
53.16(422) Federal rulings and regulations
53.17(422) Depreciation of speculative shell buildings
53.18(422) Deduction of multipurpose vehicle registration fee
53.19(422) Deduction of foreign dividends
53.20(422) Employer social security credit for tips
53.21(422) Deduction for contributions made to the endowment fund of the Iowa educational savings plan trust
53.22(422) Additional first-year depreciation allowance
53.23(422) Section 179 expensing
53.24(422) Exclusion of ordinary or capital gain income realized as a result of involuntary conversion of property due to eminent domain
53.25(422) Exclusion of income from sale, rental or furnishing of tangible personal property or services directly related to production of film, television or video projects

CHAPTER 54
ALLOCATION AND APPORTIONMENT

54.1(422) Basis of corporate tax
54.2(422) Allocation or apportionment of investment income
54.3(422) Application of related expense to allocable interest, dividends, rents and royalties—tax periods beginning on or after January 1, 1978
54.4(422) Net gains and losses from the sale of assets
54.5(422) Where income is derived from the manufacture or sale of tangible personal property
54.6(422) Apportionment of income derived from business other than the manufacture or sale of tangible personal property
54.7(422) Apportionment of income of transportation, communications, and certain public utilities corporations

54.8(422) Apportionment of income derived from more than one business activity carried on within a single corporate structure
54.9(422) Allocation and apportionment of income in special cases

CHAPTER 55
ASSESSMENTS, REFUNDS, APPEALS

55.1(422) Notice of discrepancies
55.2(422) Notice of assessment
55.3(422) Refund of overpaid tax
55.4(421) Abatement of tax
55.5(422) Protests

CHAPTER 56
ESTIMATED TAX FOR CORPORATIONS

56.1(422) Who must pay estimated tax
56.2(422) Time for filing and payment of tax
56.3(422) Special estimate periods
56.4(422) Reporting forms
56.5(422) Penalties
56.6(422) Overpayment of estimated tax

TITLE VII
FRANCHISE

CHAPTER 57
ADMINISTRATION

57.1(422) Definitions
57.2(422) Statutes of limitation
57.3(422) Retention of records
57.4(422) Authority for deductions
57.5(422) Jeopardy assessments
57.6(422) Information deemed confidential
57.7(422) Power of attorney
57.8(422) Delegation to audit and examine

CHAPTER 58
FILING RETURNS, PAYMENT OF TAX, PENALTY AND INTEREST,
AND ALLOCATION OF TAX REVENUES

58.1(422) Who must file
58.2(422) Time and place for filing return
58.3(422) Form for filing
58.4(422) Payment of tax
58.5(422) Minimum tax
58.6(422) Refunds and overpayments
58.7(422) Allocation of franchise tax revenues
58.8(15E) Eligible housing business tax credit
58.9(15E) Eligible development business investment tax credit
58.10(422) Historic preservation and cultural and entertainment district tax credit
58.11(15E,422) Venture capital credits
58.12(15) New capital investment program tax credits
58.13(15E) Endow Iowa tax credit
58.14(15I,422) Wage-benefits tax credit
58.15(422,476B) Wind energy production tax credit
58.16(422,476C) Renewable energy tax credit

58.17(15) High quality job creation program
58.18(15E,422) Economic development region revolving fund tax credit
58.19(15,422) Film qualified expenditure tax credit
58.20(15,422) Film investment tax credit

CHAPTER 59
DETERMINATION OF NET INCOME

59.1(422) Computation of net income for financial institutions
59.2(422) Net operating loss carrybacks and carryovers
59.3(422) Capital loss carryback
59.4(422) Net operating and capital loss carrybacks and carryovers
59.5(422) Interest and dividends from federal securities
59.6(422) Interest and dividends from foreign securities and securities of states and other political subdivisions
59.7(422) Safe harbor leases
59.8(422) Additional deduction for wages paid or accrued for work done in Iowa by certain individuals
59.9(422) Work opportunity tax credit
59.10 Reserved
59.11(422) Gains and losses on property acquired before January 1, 1934
59.12(422) Federal income tax deduction
59.13(422) Iowa franchise taxes
59.14(422) Method of accounting, accounting period
59.15(422) Consolidated returns
59.16(422) Federal rulings and regulations
59.17 Reserved
59.18(422) Depreciation of speculative shell buildings
59.19(422) Deduction of multipurpose vehicle registration fee
59.20(422) Disallowance of expenses to carry an investment subsidiary for tax years which begin on or after January 1, 1995
59.21(422) S corporation and limited liability company financial institutions
59.22(422) Deduction for contributions made to the endowment fund of the Iowa educational savings plan trust
59.23(422) Additional first-year depreciation allowance
59.24(422) Section 179 expensing

ALLOCATION AND APPORTIONMENT

59.25(422) Basis of franchise tax
59.26(422) Allocation and apportionment
59.27(422) Net gains and losses from the sale of assets
59.28(422) Apportionment factor
59.29(422) Allocation and apportionment of income in special cases

CHAPTER 60
ASSESSMENTS, REFUNDS, APPEALS

60.1(422) Notice of discrepancies
60.2(422) Notice of assessment
60.3(422) Refund of overpaid tax
60.4(421) Abatement of tax
60.5(422) Protests

CHAPTER 61
ESTIMATED TAX FOR FINANCIAL INSTITUTIONS

61.1(422) Who must pay estimated tax
61.2(422) Time for filing and payment of tax
61.3(422) Special estimate periods
61.4(422) Reporting forms
61.5(422) Penalties
61.6(422) Overpayment of estimated tax

CHAPTERS 62 to 66
Reserved

CHAPTER 67
ADMINISTRATION

67.1(452A) Definitions
67.2(452A) Statute of limitations, supplemental assessments and refund adjustments
67.3(452A) Taxpayers required to keep records
67.4(452A) Audit—costs
67.5(452A) Estimate gallonage
67.6(452A) Timely filing of returns, reports, remittances, applications, or requests
67.7(452A) Extension of time to file
67.8(452A) Penalty and interest
67.9(452A) Penalty and enforcement provisions
67.10(452A) Application of remittance
67.11(452A) Reports, returns, records—variations
67.12(452A) Form of invoice
67.13(452A) Credit card invoices
67.14(452A) Original invoice retained by purchaser—certified copy if lost
67.15(452A) Taxes erroneously or illegally collected
67.16(452A) Credentials and receipts
67.17(452A) Information confidential
67.18(452A) Delegation to audit and examine
67.19(452A) Practice and procedure before the department of revenue
67.20(452A) Time for filing protest
67.21(452A) Bonding procedure
67.22(452A) Tax refund offset
67.23(452A) Supplier, restrictive supplier, importer, exporter, blender, dealer, or user licenses
67.24(452A) Reinstatement of license canceled for cause
67.25(452A) Fuel used in implements of husbandry
67.26(452A) Excess tax collected
67.27(452A) Retailer gallons report

CHAPTER 68
MOTOR FUEL AND UNDYED SPECIAL FUEL

68.1(452A) Definitions
68.2(452A) Tax rates—time tax attaches—responsible party
68.3(452A) Exemption
68.4(452A) Ethanol blended gasoline taxation—nonterminal location
68.5(452A) Tax returns—computations
68.6(452A) Distribution allowance
68.7(452A) Supplier credit—uncollectible account
68.8(452A) Refunds
68.9(452A) Claim for refund—payment of claim

68.10(452A) Refund permit
68.11(452A) Revocation of refund permit
68.12(452A) Income tax credit in lieu of refund
68.13(452A) Reduction of refund—sales tax
68.14(452A) Terminal withdrawals—meters
68.15(452A) Terminal and nonterminal storage facility reports and records
68.16(452A) Method of reporting taxable gallonage
68.17(452A) Transportation reports
68.18(452A) Bill of lading or manifest requirements

CHAPTER 69
LIQUEFIED PETROLEUM GAS—
COMPRESSED NATURAL GAS

69.1(452A) Definitions
69.2(452A) Tax rates—time tax attaches—responsible party—payment of the tax
69.3(452A) Penalty and interest
69.4(452A) Bonding procedure
69.5(452A) Persons authorized to place L.P.G. or C.N.G. in the fuel supply tank of a motor vehicle
69.6(452A) Requirements to be licensed
69.7(452A) Licensed metered pumps
69.8(452A) Single license for each location
69.9(452A) Dealer's and user's license nonassignable
69.10(452A) Separate storage—bulk sales—highway use
69.11(452A) Combined storage—bulk sales—highway sales or use
69.12(452A) Exemption certificates
69.13(452A) L.P.G. sold to the state of Iowa, its political subdivisions, contract carriers under contract with public schools to transport pupils or regional transit systems
69.14(452A) Refunds
69.15(452A) Notice of meter seal breakage
69.16(452A) Location of records—L.P.G. or C.N.G. users and dealers

TITLE IX
PROPERTY

CHAPTER 70
REPLACEMENT TAX AND STATEWIDE PROPERTY TAX

DIVISION I
REPLACEMENT TAX

70.1(437A) Who must file return
70.2(437A) Time and place for filing return
70.3(437A) Form for filing
70.4(437A) Payment of tax
70.5(437A) Statute of limitations
70.6(437A) Billings
70.7(437A) Refunds
70.8(437A) Abatement of tax
70.9(437A) Taxpayers required to keep records
70.10(437A) Credentials
70.11(437A) Audit of records
70.12(437A) Collections/reimbursements
70.13(437A) Information confidential

DIVISION II
STATEWIDE PROPERTY TAX

70.14(437A) Who must file return
70.15(437A) Time and place for filing return
70.16(437A) Form for filing
70.17(437A) Payment of tax
70.18(437A) Statute of limitations
70.19(437A) Billings
70.20(437A) Refunds
70.21(437A) Abatement of tax
70.22(437A) Taxpayers required to keep records
70.23(437A) Credentials
70.24(437A) Audit of records

CHAPTER 71
ASSESSMENT PRACTICES AND EQUALIZATION

71.1(405,427A,428,441,499B) Classification of real estate
71.2(421,428,441) Assessment and valuation of real estate
71.3(421,428,441) Valuation of agricultural real estate
71.4(421,428,441) Valuation of residential real estate
71.5(421,428,441) Valuation of commercial real estate
71.6(421,428,441) Valuation of industrial land and buildings
71.7(421,427A,428,441) Valuation of industrial machinery
71.8(428,441) Abstract of assessment
71.9(428,441) Reconciliation report
71.10(421) Assessment/sales ratio study
71.11(441) Equalization of assessments by class of property
71.12(441) Determination of aggregate actual values
71.13(441) Tentative equalization notices
71.14(441) Hearings before the director
71.15(441) Final equalization order
71.16(441) Alternative method of implementing equalization orders
71.17(441) Special session of boards of review
71.18(441) Judgment of assessors and local boards of review
71.19(441) Conference boards
71.20(441) Board of review
71.21(421,17A) Property assessment appeal board
71.22(428,441) Assessors
71.23 and 71.24 Reserved
71.25(441,443) Omitted assessments
71.26(441) Assessor compliance

CHAPTER 72
EXAMINATION AND CERTIFICATION OF ASSESSORS AND DEPUTY ASSESSORS

72.1(441) Application for examination
72.2(441) Examinations
72.3(441) Equivalent of high school diploma
72.4(441) Appraisal-related experience
72.5(441) Regular certification
72.6(441) Temporary certification
72.7(441) Restricted certification
72.8(441) Deputy assessors—regular certification
72.9(441) Deputy assessors—restricted certification

72.10(441) Appointment of deputy assessors
72.11(441) Special examinations
72.12(441) Register of eligible candidates
72.13(441) Course of study for provisional appointees
72.14(441) Examining board
72.15(441) Appointment of assessor
72.16(441) Reappointment of assessor
72.17(441) Removal of assessor
72.18(421,441) Courses offered by the department of revenue

CHAPTER 73
PROPERTY TAX CREDIT AND RENT REIMBURSEMENT

73.1(425) Eligible claimants
73.2(425) Separate homesteads—husband and wife property tax credit
73.3(425) Dual claims
73.4(425) Multipurpose building
73.5(425) Multidwelling
73.6(425) Income
73.7(425) Joint tenancy
73.8(425) Amended claim
73.9(425) Simultaneous homesteads
73.10(425) Confidential information
73.11(425) Mobile, modular, and manufactured homes
73.12(425) Totally disabled
73.13(425) Nursing homes
73.14(425) Household
73.15(425) Homestead
73.16(425) Household income
73.17(425) Timely filing of claims
73.18(425) Separate homestead—husband and wife rent reimbursements
73.19(425) Gross rent/rent constituting property taxes paid
73.20(425) Leased land
73.21(425) Property: taxable status
73.22(425) Special assessments
73.23(425) Suspended, delinquent, or canceled taxes
73.24(425) Income: spouse
73.25(425) Common law marriage
73.26 Reserved
73.27(425) Special assessment credit
73.28(425) Credit applied
73.29(425) Deceased claimant
73.30(425) Audit of claim
73.31(425) Extension of time for filing a claim
73.32(425) Annual adjustment factor
73.33(425) Proration of claims
73.34(425) Unreasonable hardship

CHAPTER 74
MOBILE, MODULAR, AND MANUFACTURED HOME TAX

74.1(435) Definitions
74.2(435) Movement of home to another county
74.3(435) Sale of home

74.4(435) Reduced tax rate
74.5(435) Taxation—real estate
74.6(435) Taxation—square footage
74.7(435) Audit by department of revenue
74.8(435) Collection of tax

CHAPTER 75
PROPERTY TAX ADMINISTRATION

75.1(441) Tax year
75.2(445) Partial payment of tax
75.3(445) When delinquent
75.4(446) Payment of subsequent year taxes by purchaser
75.5(428,433,434,437,437A,438) Central assessment confidentiality
75.6(446) Tax sale
75.7(445) Refund of tax
75.8(614) Delinquent property taxes

CHAPTER 76
DETERMINATION OF VALUE OF RAILROAD COMPANIES

76.1(434) Definitions of terms
76.2(434) Filing of annual reports
76.3(434) Comparable sales
76.4(434) Stock and debt approach to unit value
76.5(434) Income capitalization approach to unit value
76.6(434) Cost approach to unit value
76.7(434) Correlation
76.8(434) Allocation of unit value to state
76.9(434) Exclusions

CHAPTER 77
DETERMINATION OF VALUE OF UTILITY COMPANIES

77.1(428,433,437,438) Definition of terms
77.2(428,433,437,438) Filing of annual reports
77.3(428,433,437,438) Comparable sales
77.4(428,433,437,438) Stock and debt approach to unit value
77.5(428,433,437,438) Income capitalization approach to unit value
77.6(428,433,437,438) Cost approach to unit value
77.7(428,433,437,438) Correlation
77.8(428,433,437,438) Allocation of unit value to state

CHAPTER 78
PROPERTY TAX EXEMPTIONS

78.1(427,441) Responsibility of local assessors
78.2(441) Responsibility of local boards of review
78.3(427) Responsibility of director of revenue
78.4(427) Application for exemption
78.5(427) Partial exemptions
78.6(427,441) Taxable status of property
78.7 Reserved
78.8(427) Abatement of taxes

CHAPTER 79
REAL ESTATE TRANSFER TAX AND DECLARATIONS OF VALUE

79.1(428A) Real estate transfer tax: Responsibility of county recorders
79.2(428A) Taxable status of real estate transfers
79.3(428A) Declarations of value: Responsibility of county recorders and city and county assessors
79.4(428A) Certain transfers of agricultural realty
79.5(428A) Form completion and filing requirements
79.6(428A) Public access to declarations of value

CHAPTER 80
PROPERTY TAX CREDITS AND EXEMPTIONS

80.1(425) Homestead tax credit
80.2(22,35,426A) Military service tax exemption
80.3(427) Pollution control and recycling property tax exemption
80.4(427) Low-rent housing for the elderly and persons with disabilities
80.5(427) Speculative shell buildings
80.6(427B) Industrial property tax exemption
80.7(427B) Assessment of computers and industrial machinery and equipment
80.8(404) Urban revitalization partial exemption
80.9(427C,441) Forest and fruit-tree reservations
80.10(427B) Underground storage tanks
80.11(425A) Family farm tax credit
80.12(427) Methane gas conversion property
80.13(427B) Wind energy conversion property
80.14(427) Mobile home park storm shelter
80.15(427) Barn and one-room schoolhouse preservation
80.16(426) Agricultural land tax credit
80.17(427) Indian housing property
80.18(427) Property used in value-added agricultural product operations
80.19(427) Dwelling unit property within certain cities
80.20(427) Nursing facilities
80.21(368) Annexation of property by a city
80.22(427) Port authority
80.23(427A) Concrete batch plants and hot mix asphalt facilities
80.24(427) Airport property
80.25(427A) Car wash equipment
80.26(427) Web search portal property
80.27(427) Privately owned libraries and art galleries

TITLE X
CIGARETTES AND TOBACCO

CHAPTER 81
ADMINISTRATION

81.1(453A) Definitions
81.2(453A) Credentials and receipts
81.3(453A) Examination of records
81.4(453A) Records
81.5(453A) Form of invoice
81.6(453A) Audit of records—cost, supplemental assessments and refund adjustments
81.7(453A) Bonds
81.8(98) Penalties

81.9(98) Interest
81.10(98) Waiver of penalty or interest
81.11(453A) Appeal—practice and procedure before the department
81.12(453A) Permit—license revocation
81.13(453A) Permit applications and denials
81.14(453A) Confidential information
81.15(98) Request for waiver of penalty
81.16(453A) Inventory tax

CHAPTER 82
CIGARETTE TAX

82.1(453A) Permits required
82.2(453A) Partial year permits—payment—refund—exchange
82.3(453A) Bond requirements
82.4(453A) Cigarette tax—attachment—exemption—exclusivity of tax
82.5(453A) Cigarette tax stamps
82.6(453A) Banks authorized to sell stamps—requirements—restrictions
82.7(453A) Purchase of cigarette tax stamps—discount
82.8(453A) Affixing stamps
82.9(453A) Reports
82.10(453A) Manufacturer's samples
82.11(453A) Refund of tax—unused and destroyed stamps

CHAPTER 83
TOBACCO TAX

83.1(453A) Licenses
83.2(453A) Distributor bond
83.3(453A) Tax on tobacco products
83.4(453A) Tax on little cigars
83.5(453A) Distributor discount
83.6(453A) Distributor returns
83.7(453A) Consumer's return
83.8(453A) Transporter's report
83.9(453A) Free samples
83.10(453A) Credits and refunds of taxes
83.11(453A) Sales exempt from tax
83.12(81GA,HF339) Retail permits required
83.13(81GA,HF339) Permit issuance fee
83.14(81GA,HF339) Refunds of permit fee
83.15(81GA,HF339) Application for permit
83.16(81GA,HF339) Records and reports
83.17(81GA,HF339) Penalties

CHAPTER 84
UNFAIR CIGARETTE SALES

84.1(421B) Definitions
84.2(421B) Minimum price
84.3(421B) Combination sales
84.4(421B) Retail redemption of coupons
84.5(421B) Exempt sales
84.6(421B) Notification of manufacturer's price increase
84.7(421B) Permit revocation

CHAPTER 85
TOBACCO MASTER SETTLEMENT AGREEMENT

DIVISION I
TOBACCO MASTER SETTLEMENT AGREEMENT

85.1(453C) National uniform tobacco settlement
85.2(453C) Definitions
85.3(453C) Report required
85.4(453C) Report information
85.5(453C) Record-keeping requirement
85.6(453C) Confidentiality
85.7 to 85.20 Reserved

DIVISION II
TOBACCO PRODUCT MANUFACTURERS' OBLIGATIONS AND PROCEDURES

85.21(80GA,SF375) Definitions
85.22(80GA,SF375) Directory of tobacco product manufacturers

TITLE XI
INHERITANCE, ESTATE, GENERATION SKIPPING, AND FIDUCIARY INCOME TAX

CHAPTER 86
INHERITANCE TAX

86.1(450) Administration
86.2(450) Inheritance tax returns and payment of tax
86.3(450) Audits, assessments and refunds
86.4(450) Appeals
86.5(450) Gross estate
86.6(450) The net estate
86.7(450) Life estate, remainder and annuity tables—in general
86.8(450B) Special use valuation
86.9(450) Market value in the ordinary course of trade
86.10(450) Alternate valuation date
86.11(450) Valuation—special problem areas
86.12(450) The inheritance tax clearance
86.13(450) No lien on the surviving spouse's share of the estate
86.14(450) Computation of shares

CHAPTER 87
IOWA ESTATE TAX

87.1(451) Administration
87.2(451) Confidential and nonconfidential information
87.3(451) Tax imposed, tax returns, and tax due
87.4(451) Audits, assessments and refunds
87.5(451) Appeals
87.6(451) Applicable rules

CHAPTER 88
GENERATION SKIPPING TRANSFER TAX

88.1(450A) Administration
88.2(450A) Confidential and nonconfidential information
88.3(450A) Tax imposed, tax due and tax returns
88.4(450A) Audits, assessments and refunds
88.5(450A) Appeals
88.6(450A) Generation skipping transfers prior to Public Law 99-514

CHAPTER 89
FIDUCIARY INCOME TAX

89.1(422) Administration
89.2(422) Confidentiality
89.3(422) Situs of trusts
89.4(422) Fiduciary returns and payment of the tax
89.5(422) Extension of time to file and pay the tax
89.6(422) Penalties
89.7(422) Interest or refunds on net operating loss carrybacks
89.8(422) Reportable income and deductions
89.9(422) Audits, assessments and refunds
89.10(422) The income tax certificate of acquittance
89.11(422) Appeals to the director

CHAPTER 90
Reserved

TITLE XII
MARIJUANA AND CONTROLLED SUBSTANCES STAMP TAX

CHAPTER 91
ADMINISTRATION OF MARIJUANA AND CONTROLLED SUBSTANCES STAMP TAX

91.1(453B) Marijuana and controlled substances stamp tax
91.2(453B) Sales of stamps
91.3(453B) Refunds pertaining to unused stamps

CHAPTERS 92 to 96
Reserved

TITLE XIII

CHAPTERS 97 to 101
Reserved

TITLE XIV
HOTEL AND MOTEL TAX

CHAPTER 102
Reserved

CHAPTER 103
STATE-IMPOSED AND LOCALLY IMPOSED HOTEL AND MOTEL TAXES—ADMINISTRATION

103.1(423A) Definitions, administration, and imposition
103.2(423A) Statute of limitations, supplemental assessments and refund adjustments
103.3(423A) Credentials and receipts
103.4(423A) Retailers required to keep records
103.5(423A) Audit of records
103.6(423A) Billings
103.7(423A) Collections
103.8(423A) No property exempt from distress and sale
103.9(423A) Information confidential
103.10(423A) Bonding procedure
103.11(423A) Sales tax

103.12(423A) Judicial review
103.13(423A) Registration
103.14(423A) Notification
103.15(423A) Certification of funds

CHAPTER 104
HOTEL AND MOTEL—
FILING RETURNS, PAYMENT OF TAX, PENALTY, AND INTEREST

104.1(423A) Returns, time for filing
104.2(423A) Remittances
104.3(423A) Permits
104.4(423A) Sale of business
104.5(423A) Bankruptcy, insolvency or assignment for benefit of creditors
104.6(423A) Claim for refund of tax
104.7(423A) Application of payments
104.8(422A) Interest and penalty
104.9(422A) Request for waiver of penalty
104.10(423A) Extension of time for filing
104.11(421,423A) Personal liability of corporate officers and partners for unpaid tax
104.12(421,423A) Good faith exception for successor liability

CHAPTER 105
LOCALLY IMPOSED HOTEL AND MOTEL TAX

105.1(423A) Local option
105.2(423A) Tax rate
105.3(423A) Tax base
105.4(423A) Imposition dates
105.5(423A) Adding or absorbing tax
105.6(423A) Termination dates

CHAPTER 106
Reserved

TITLE XV
LOCAL OPTION SALES AND SERVICE TAX

CHAPTER 107
LOCAL OPTION SALES AND SERVICE TAX

107.1(422B) Definitions
107.2(422B) Local option sales and service tax
107.3(422B) Transactions subject to and excluded from local option sales tax
107.4(422B) Transactions subject to and excluded from local option service tax
107.5(422B) Single contracts for taxable services performed partly within and partly outside of an area of a county imposing the local option service tax
107.6(422B) Motor vehicle, recreational vehicle, and recreational boat rental subject to local option service tax
107.7(422B) Special rules regarding utility payments
107.8(423B) Contacts with county necessary to impose collection obligation upon a retailer
107.9(423B,423E) Sales not subject to local option tax, including transactions subject to Iowa use tax
107.10(422B) Local option sales and service tax payments to local governments
107.11(422B) Procedure if county of receipt's origins is unknown
107.12(422B) Computation of local option tax due from mixed sales on excursion boats
107.13(421,422B) Officers and partners, personal liability for unpaid tax

107.14(422B) Local option sales and service tax imposed by a city
107.15(422B) Application of payments
107.16(422B) Construction contractor refunds
107.17(422B,422E) Discretionary application of local option tax revenues

CHAPTER 108
LOCAL OPTION SCHOOL INFRASTRUCTURE
SALES AND SERVICE TAX

108.1(422E) Definitions
108.2(422E) Authorization, rate of tax, imposition, use of revenues, and administration
108.3(422E) Collection of the tax
108.4(422E) Similarities to the local option sales and service tax imposed in Iowa Code chapter 422B and 701—Chapter 107
108.5(422E) Sales not subject to local option tax, including transactions subject to Iowa use tax
108.6(422E) Deposits of receipts
108.7(422E) Local option school infrastructure sales and service tax payments to school districts
108.8(422E) Construction contract refunds
108.9(422E) 28E agreements

CHAPTER 109
NEW SCHOOL INFRASTRUCTURE LOCAL OPTION SALES AND SERVICES TAX—
EFFECTIVE ON OR AFTER APRIL 1, 2003, THROUGH FISCAL YEARS
ENDING DECEMBER 31, 2022

109.1(422E) Use of revenues and definitions
109.2(422E) Imposition of tax
109.3(422E) Application of law
109.4(422E) Collection of tax and distribution
109.5(422E) Insufficient funds
109.6(422E) Use of revenues by the school district
109.7(422E) Bonds
109.8(422E) 28E agreements

CHAPTERS 110 to 119
Reserved

TITLE XVI
REASSESSMENT EXPENSE FUND

CHAPTER 120
ORGANIZATION AND OPERATION

120.1(421) Organization of committee
120.2(421) Application for loan
120.3(421) Criteria for granting loan

CHAPTER 121
Reserved

TITLE XVII
ASSESSOR CONTINUING EDUCATION

CHAPTER 122
ADMINISTRATION

122.1(441) Establishment
122.2(441) General operation

122.3(441) Location
122.4(441) Purpose

CHAPTER 123
CERTIFICATION

123.1(441) General
123.2(441) Confidentiality
123.3(441) Certification of assessors
123.4(441) Certification of deputy assessors
123.5(441) Type of credit
123.6(441) Retaking examination
123.7(441) Instructor credit
123.8(441) Conference board and assessor notification
123.9(441) Director of revenue notification

CHAPTER 124
COURSES

124.1(441) Course selection
124.2(441) Scheduling of courses
124.3(441) Petitioning to add, delete or modify courses
124.4(441) Course participation
124.5(441) Retaking a course
124.6(441) Continuing education program for assessors

CHAPTER 125
REVIEW OF AGENCY ACTION

125.1(441) Decisions final
125.2(441) Grievance and appeal procedures

CHAPTERS 126 to 149
Reserved

TITLE XVIII
DEBT COLLECTION

CHAPTER 150
FEDERAL OFFSET FOR IOWA INCOME TAX OBLIGATIONS

150.1(421,26USC6402) Purpose and general application of offset of a federal tax overpayment to collect an Iowa income tax obligation
150.2(421,26USC6402) Definitions
150.3(421,26USC6402) Prerequisites for requesting a federal offset
150.4(421,26USC6402) Procedure after submission of evidence
150.5(421,26USC6402) Notice by Iowa to the Secretary to request federal offset
150.6(421,26USC6402) Erroneous payments to Iowa
150.7(421,26USC6402) Correcting and updating notice to the Secretary

CHAPTER 151
COLLECTION OF DEBTS OWED THE STATE
OF IOWA OR A STATE AGENCY

151.1(421) Definitions
151.2(421) Scope and purpose
151.3(421) Participation guidelines
151.4(421) Duties of the agency
151.5(421) Duties of the department—performance of collection
151.6(421) Payment of collected amounts

151.7(421) Reimbursement for collection of liabilities
151.8(421) Confidentiality of information

CHAPTER 152
DEBT COLLECTION AND SELLING OF PROPERTY
TO COLLECT DELINQUENT DEBTS

152.1(421,422,626,642) Definitions
152.2(421,422,626,642) Sale of property
152.3(421,422,626,642) Means of sale

CHAPTER 153
Reserved

CHAPTER 154
CHALLENGES TO ADMINISTRATIVE LEVIES AND
PUBLICATION OF NAMES OF DEBTORS

154.1(421) Definitions
154.2(421) Administrative levies
154.3(421) Challenges to administrative levies
154.4(421) Form and time of challenge
154.5(421) Issues that may be raised
154.6(421) Review of challenge
154.7(421) Actions where there is a mistake of fact
154.8(421) Action if there is not a mistake of fact
154.9 to 154.15 Reserved
154.16(421) List for publication
154.17(421) Names to be published
154.18(421) Release of information

CHAPTERS 155 to 210
Reserved

TITLE XIX
STREAMLINED SALES AND USE TAX RULES

CHAPTER 211
DEFINITIONS

211.1(423) Definitions

CHAPTER 212
ELEMENTS INCLUDED IN AND EXCLUDED
FROM A TAXABLE SALE AND SALES PRICE

212.1(423) Tax not to be included in price
212.2(423) Finance charge
212.3(423) Retailers' discounts, trade discounts, rebates and coupons
212.4(423) Excise tax included in and excluded from sales price
212.5(423) Trade-ins
212.6(423) Installation charges when tangible personal property is sold at retail
212.7(423) Service charge and gratuity

CHAPTER 213
MISCELLANEOUS TAXABLE SALES

213.1(423) Tax imposed
213.2(423) Athletic events
213.3(423) Conditional sales contracts

213.4(423) The sales price of sales of butane, propane and other like gases in cylinder drums, etc.
213.5(423) Antiques, curios, old coins, collector's postage stamps, and currency exchanged for greater than face value
213.6(423) Communication services furnished by hotel to its guests
213.7(423) Consignment sales
213.8(423) Electrotypes, types, zinc etchings, halftones, stereotypes, color process plates, wood mounts and art productions
213.9(423) Explosives used in mines, quarries and elsewhere
213.10(423) Sales on layaway
213.11(423) Memorial stones
213.12(423) Creditors and trustees
213.13(423) Sale of pets
213.14(423) Redemption of meal tickets, coupon books and merchandise cards as a taxable sale
213.15(423) Rental of personal property in connection with the operation of amusements
213.16(423) Repossessed goods
213.17(423) Sales of signs at retail
213.18(423) Tangible personal property made to order
213.19(423) Used or secondhand tangible personal property
213.20(423) Carpeting and other floor coverings
213.21(423) Goods damaged in transit
213.22(423) Snowmobiles, motorboats, and certain other vehicles
213.23(423) Photographers and photostaters
213.24(423) Sale, transfer or exchange of tangible personal property or taxable enumerated services between affiliated corporations
213.25(423) Urban transit systems

CHAPTER 214
MISCELLANEOUS NONTAXABLE TRANSACTIONS

214.1(423) Corporate mergers which do not involve taxable sales of tangible personal property or services
214.2(423) Sales of prepaid merchandise cards
214.3(423) Demurrage charges
214.4(423) Beverage container deposits
214.5(423) Exempt sales by excursion boat licensees
214.6(423) Advertising agencies, commercial artists and designers as an agent or as a nonagent of a client

CHAPTERS 215 to 218
Reserved

CHAPTER 219
SALES AND USE TAX ON CONSTRUCTION ACTIVITIES

219.1(423) General information
219.2(423) Contractors—consumers of building materials, supplies, and equipment by statute
219.3(423) Sales of building materials, supplies, and equipment to contractors, subcontractors, builders or owners
219.4(423) Contractors, subcontractors or builders who are retailers
219.5(423) Building materials, supplies, and equipment used in the performance of construction contracts within and outside Iowa
219.6(423) Tangible personal property used or consumed by the manufacturer thereof
219.7(423) Prefabricated structures
219.8(423) Types of construction contracts

219.9(423) Machinery and equipment sales contracts with installation
219.10(423) Construction contracts with equipment sales (mixed contracts)
219.11(423) Distinguishing machinery and equipment from real property
219.12(423) Tangible personal property which becomes structures
219.13(423) Tax on enumerated services
219.14(423) Transportation cost
219.15(423) Start-up charges
219.16(423) Liability of subcontractors
219.17(423) Liability of sponsors
219.18(423) Withholding
219.19(423) Resale certificates
219.20(423) Reporting for use tax
219.21(423) Exempt sale, lease, or rental of equipment used by contractors, subcontractors, or builders

CHAPTERS 220 to 224
Reserved

CHAPTER 225
RESALE AND PROCESSING EXEMPTIONS PRIMARILY OF BENEFIT TO RETAILERS

225.1(423) Paper or plastic plates, cups, and dishes, paper napkins, wooden or plastic spoons and forks, and straws
225.2(423) A service purchased for resale
225.3(423) Services used in the repair or reconditioning of certain tangible personal property
225.4(423) Tangible personal property purchased by a person engaged in the performance of a service
225.5(423) Maintenance or repair of fabric or clothing
225.6(423) The sales price from the leasing of all tangible personal property subject to tax

CHAPTERS 226 to 229
Reserved

CHAPTER 230
EXEMPTIONS PRIMARILY BENEFITING MANUFACTURERS AND OTHER PERSONS ENGAGED IN PROCESSING

230.1 Reserved
230.2(423) Carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and taxable services used in processing
230.3(423) Services used in processing
230.4(423) Chemicals, solvents, sorbents, or reagents used in processing
230.5(423) Exempt sales of gases used in the manufacturing process
230.6(423) Sale of electricity to water companies
230.7(423) Wind energy conversion property
230.8(423) Exempt sales or rentals of core making and mold making equipment, and sand handling equipment
230.9(423) Chemical compounds used to treat water
230.10(423) Exclusive web search portal business and its exemption
230.11(423) Web search portal business and its exemption

CHAPTER 231
EXEMPTIONS PRIMARILY OF BENEFIT TO CONSUMERS

231.1(423) Newspapers, free newspapers and shoppers' guides
231.2(423) Motor fuel, special fuel, aviation fuels and gasoline
231.3(423) Sales of food and food ingredients
231.4(423) Sales of candy
231.5(423) Sales of prepared food
231.6(423) Prescription drugs, medical devices, oxygen, and insulin
231.7(423) Exempt sales of other medical devices which are not prosthetic devices
231.8(423) Prosthetic devices, durable medical equipment, and mobility enhancing equipment
231.9(423) Raffles
231.10(423) Exempt sales of prizes
231.11(423) Modular homes
231.12(423) Access to on-line computer service
231.13(423) Sale or rental of information services
231.14(423) Exclusion from tax for property delivered by certain media
231.15(423) Exempt sales of clothing and footwear during two-day period in August
231.16(423) State sales tax phase-out on energies

CHAPTERS 232 to 234
Reserved

CHAPTER 235
REBATE OF IOWA SALES TAX PAID

235.1(423) Sanctioned automobile racetrack facilities

CHAPTERS 236 to 239
Reserved

CHAPTER 240
RULES NECESSARY TO IMPLEMENT THE STREAMLINED SALES AND USE TAX AGREEMENT

240.1(423) Allowing use of the lowest tax rate within a database area and use of the tax rate for a five-digit area when a nine-digit zip code cannot be used
240.2(423) Permissible categories of exemptions
240.3(423) Requirement of uniformity in the filing of returns and remittance of funds
240.4(423) Allocation of bad debts
240.5(423) Purchaser refund procedures
240.6(423) Relief from liability for reliance on taxability matrix
240.7(423) Effective dates of taxation rate increases or decreases when certain services are furnished
240.8(423) Prospective application of defining "retail sale" to include a lease or rental

CHAPTER 241
EXCISE TAXES NOT GOVERNED BY THE STREAMLINED SALES AND USE TAX AGREEMENT

241.1(423A,423D) Purpose of the chapter
241.2(423A,423D) Director's administration

DIVISION I
STATE-IMPOSED HOTEL AND MOTEL TAX

241.3(423A) Definitions
241.4(423A) Imposition of tax
241.5(423A) Exemptions

DIVISION II
EXCISE TAX ON SPECIFIC CONSTRUCTION MACHINERY AND EQUIPMENT

241.6(423D) Definitions
241.7(423D) Tax imposed
241.8(423D) Exemption

CHAPTER 1
STATE BOARD OF TAX REVIEW—ADMINISTRATION
[Prior to 12/17/86, Revenue Department[730]]

701—1.1(17A,421) Establishment, membership and location of the state board of tax review. By an Act of the Sixty-second General Assembly (1967 Iowa Acts, chapter 342), the state board of tax review (state board) was established within the department of revenue. The state board consists of three members who are appointed by the governor and subject to confirmation by the senate. The board also has a secretary who assists in administrative tasks and serves the board. One of the three members is selected as the chairperson of the state board, and it is the chairperson's duty to call and chair meetings. The members shall serve staggered terms and each member shall serve a six-year term. A member shall not be permitted a successive term.

The state board determines when it should convene to discuss or conduct hearings regarding matters that are appealed to the board. The office of the state board is maintained in the department of revenue, and its mailing address is State Board of Tax Review, Department of Revenue, Hoover State Office Building, Fourth Floor, 1305 E. Walnut Street, Des Moines, Iowa 50319.

701—1.2(421,17A) Powers and duties of the state board. The state board's powers and duties include, but may not be limited to, the following:

1. Reviewing matters appealed to the state board from the department of revenue or by an affected taxpayer;
2. Reviewing matters of original jurisdiction and matters on the board's own motion as set out in Iowa Code section 421.1(4);
3. Determining and adopting policies that are authorized by law and that are necessary for the more efficient operation of any phases of tax review;
4. Advising and counseling the director of revenue concerning tax laws and regulations;
5. Preparing and submitting to each regular session of the general assembly a report containing recommendations regarding new laws, the amendment of current law, or review for repeal of laws;
6. Reviewing and recommending appropriate action regarding petitions of interested persons to amend or rescind the procedural or administrative rules that govern the state board which are limited to 701—Chapters 1 and 2.

701—1.3(421,17A) Powers and duties not subject to the jurisdiction of the state board. The state board shall not consider or review either of the following items:

1.3(1) *Declaratory orders.* The state board shall not consider or rule on petitions for declaratory orders as to the applicability of any statutory provision, rule or other written statement of law or policy, decision, or order. Upon request, the state board may review a ruling of the department of revenue concerning the appropriate action regarding the petition.

1.3(2) *Petitions for rule making.* The state board will not consider any petitions of interested persons requesting the promulgation, amendment or rescission of any substantive tax rule. Petitions regarding these topics should be submitted to the department of revenue. The board shall review and recommend appropriate action regarding petitions of interested persons to amend or rescind the procedural or administrative rules that govern the state board which are limited to 701—Chapters 1 and 2.

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

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CHAPTER 2
STATE BOARD OF TAX REVIEW—CONDUCT OF APPEALS AND RULES OF PRACTICE AND PROCEDURE

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

DIVISION I
APPELLATE CASES

GENERAL RULES OF PRACTICE AND PROCEDURE FOR FINAL CONTESTED CASE DECISIONS OF OR ATTRIBUTABLE TO THE DIRECTOR OF REVENUE

701—2.1(421,17A) Definitions. For the purposes of these rules, the following definitions shall apply:

"Board" or *"state board"* means the state board of tax review as created by chapter 342 of the Acts of the Sixty-second General Assembly and governed by Iowa Code chapter 17A and section 421.1.

"Department" means the Iowa department of revenue.

"Director" means the director of the Iowa department of revenue.

"Secretary" means the secretary for the state board of tax review.

701—2.2(421,17A) Appeal and jurisdiction.

2.2(1) *Jurisdiction.* Jurisdiction is conferred upon the state board by the giving of written notice to the department within 30 days of the rendering of the decision, order, or directive, which is a final agency action from which such appeal is taken. The appellant may appeal the entire decision or order issued by the director or the appellant may appeal only certain issues set forth in the review by the director. In cases in which the state board does not have original jurisdiction, the state board has the power to review all of the original issues raised by the parties in the contested case, even if the issues were not appealed or subject to cross-appeal by the parties.

2.2(2) *Notice of appeal.* The notice of appeal must be proper in format and content as set forth in 701—2.3(421,17A), which governs the notice of appeal.

Notice of appeal may be given by certified mail, return receipt requested, addressed to the department of revenue to the attention of the director, or by service on the director as provided by the Iowa Rules of Civil Procedure. The mailing address for the notice of appeal is Secretary for the State Board, Director's Office, State Board of Tax Review, Hoover State Office Building, 1305 East Walnut Street, Fourth Floor, Des Moines, Iowa 50319.

Proof that the notice of appeal was filed with the state board shall be made by executing an affidavit of mailing signed by the appellant or the appellant's duly authorized representative, with return receipt and a copy of the notice attached. The affidavit shall state that the notice of appeal was mailed to the secretary for the state board indicating the mailing address that was used, or the affidavit shall state that the filing of the notice of appeal was conducted by in-person delivery to the secretary for the state board with a file-stamped copy of the notice having been received and attached to the affidavit.

2.2(3) *Scheduling of case briefs and arguments.* The state board will determine the briefing and argument schedule for the matter on appeal. The state board may resolve the appeal based on the briefs or provide an opportunity for oral argument. The state board may amend a scheduling notice that was issued by the state board. The state board may amend the notice on the board's own motion or after consideration of a petition requesting such a modification from any of the parties involved in the appeal.

701—2.3(421,17A) Form of appeal. The written notice of appeal shall contain a caption in the following form:

BEFORE THE STATE BOARD OF TAX REVIEW
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF _____ (state taxpayer's name, address and designate type of proceeding, e.g., income tax refund claim)	}	NOTICE OF APPEAL DOCKET NO. (Docket No. is assigned by Board)

The notice of appeal shall substantially state in separate numbered paragraphs the following:

1. The appellant's name and legal residence;
2. The date on which the director's decision, order or directive was issued;
3. The amount of assessment or refund denial, nature of tax, year or other period, date of assessment or refund denial, and approximate amount of total tax liability in controversy;
4. A clear and concise assignment of each and every error;
5. A clear and concise statement of the facts upon which the affected taxpayer relies as sustaining the assignment of error;
6. The relief requested;
7. The signature of affected taxpayer or counsel, together with address to which all subsequent correspondence, notice or papers shall be served or mailed.

The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service.

701—2.4(421,17A) Certification by director. Within 30 days after notice of appeal is given, the director shall certify to the board all records; documents; reports; audits; a copy of the decision, order or directive from which appeal is taken; and all other pertinent information.

701—2.5(421,17A) Motions. All motions shall be in writing and shall be filed with the secretary for the state board within 30 days after the filing of the attached pleading and shall contain the reasons and grounds supporting the motion. The state board shall act upon such motions as justice may require. Motions based on matters which do not appear of record shall be supported by affidavit.

701—2.6(421,17A) Answer. An answer shall be filed with the secretary for the state board within 30 days after the filing of pleading responded to, unless attacked by motion as provided in rule 701—2.5(421,17A), and then the answer shall be filed within 30 days after the date on which the state board issues a ruling on the motion.

701—2.7(421,17A) Docketing. Appeals shall be assigned consecutive docket numbers. Records must be maintained by the secretary for the state board consisting of the case name and the corresponding docket number assigned to the case. The records of each case shall also include each action and each act done, with the proper dates as follows:

1. The title of the appeal;
2. Brief statement of the type of tax, year or other period, date of assessment, refund denial, and the amount involved including tax, penalty, interest and costs;
3. The manner and time of service of notice of appeal;
4. The appearance of all parties;
5. Notice of hearing, together with manner and time of service; and
6. The decision of the state board or other disposition of the case and the date.

701—2.8(421,17A) Filing of papers. After proof of notice has been filed, all motions, pleadings, briefs, and other papers to be filed shall be filed in quadruplicate with the secretary for the state board who shall send copies to members of the state board and to all other parties of record, unless represented by counsel of record, then to such counsel.

701—2.9(421,17A) Hearing an appeal. In the event that the case consists of a review by the state board of a decision of or attributable to the director in a contested case proceeding, the state board will consider only those issues or selected issues actually presented at the contested case proceeding where such issues were of the type which by statute were entrusted to the director for determination. Further, when reviewing the decision of or attributable to the director on these issues presented at the contested case proceeding, the board shall not hear any further evidence with respect to those issues, but the board shall afford each party an opportunity to present briefs and oral arguments.

701—2.10(17A,421) Appearances by appellant. Any appellant may appear in person or, in the case of corporations, partnerships or other associations, by their duly authorized representative, or by an attorney-at-law or a certified public accountant authorized to practice in the state of Iowa.

701—2.11(421,17A) Authority of state board to issue procedural orders. The state board or a member of the state board may issue preliminary orders regarding procedural matters. The secretary for the state board shall immediately mail a copy of any such preliminary order entered under this rule to the two members of the board who did not participate in the order. All orders entered under this rule shall become the action of the board unless the members of the board who did not participate in the order notify the secretary of their objection within five days of their receipt of the order. If the members of the board who did not participate in the order timely object, then the order shall be null and void. The secretary shall notify the parties of the order entered under this rule, when it becomes the order of the board. The chairperson, or other member designated by the chairperson, may grant a continuance of the hearing on appeal for "good cause" even though there is insufficient time before the scheduled hearing for other members of the board to object to the continuance.

701—2.12(421,17A) Continuances. Any hearing may be continued for "good cause." Requests for continuance prior to the hearing shall be in writing and promptly filed with the state board immediately upon "the cause" becoming known.

701—2.13(17A,421) Place of hearing. Unless otherwise designated by the state board, the hearing shall be held in the office of the State Board of Tax Review, Hoover State Office Building, Fourth Floor, 1305 E. Walnut Street, Des Moines, Iowa 50319.

701—2.14(17A,421) Members participating. All appeals shall be heard by a minimum of two members of the state board. Orders and decisions shall be signed by one member of the board and shall name participating members. Decisions shall affirm, modify, remand, or reverse the decision, order, or directive from which an appeal was made. A majority decision by the state board shall govern and control. Written dissenting decisions may be filed.

701—2.15(17A,421) Presiding officer. The chairperson of the state board or a designated member shall preside at the hearing.

701—2.16(17A,421) Appeals of state board decisions. Prior to July 1, 2004, only a taxpayer could seek judicial review by the state board of a decision or order previously issued by the director. However, effective for state board decisions issued on or after July 1, 2004, either the department or the taxpayer may seek judicial review of a decision or order rendered by the state board. The department or taxpayer may seek judicial review of the entire decision or order of the state board or may seek judicial review of only certain issues contained in the decision or order of the state board.

DIVISION II
ORIGINAL JURISDICTION

RULES GOVERNING CONTESTED CASE PROCEEDINGS IN WHICH THE STATE BOARD HAS ORIGINAL JURISDICTION TO COMMENCE A CONTESTED CASE PROCEEDING

701—2.17(421,17A) Applicability and scope. The rules set forth under division II govern the proceedings for all cases in which the state board has original jurisdiction to commence a contested case proceeding.

701—2.18(17A) Definitions. For the purposes of division II, the following definitions shall apply:

"Board" or *"state board"* means the state board of tax review created by Iowa Code section 421.1.

"Contested case" means a proceeding defined by Iowa Code section 17A.2(5), over which the state board of tax review has original jurisdiction to commence a contested case proceeding, and includes any matter defined as a no factual dispute contested case pursuant to Iowa Code section 17A.10A.

"Department" means the department of revenue.

"Department of inspections and appeals" means the Iowa department of inspections and appeals which was created and is governed by Iowa Code chapter 10A.

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

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

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

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

"Person" means any individual; estate; trust; fiduciary; partnership including limited liability partnership; corporation including limited liability corporation; association; governmental subdivision; public or private organization of any character; or any other individual or entity allowed by definition under the law of another agency involved in the proceedings under this division.

"Presiding officer" means the members of the state board officiating over the contested case proceedings or, if the state board exercises its discretion and the notice of appeal is transferred from the state board to the department of inspections and appeals, then "presiding officer" means an administrative law judge employed by the division of administrative hearings of the department of inspections and appeals.

"Proposed decision" means the presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case.

701—2.19(421,17A) Time requirements. Time shall be computed as provided in Iowa Code section 4.1(34), "Time—legal holidays."

701—2.20(421,17A) Notice of appeal. Jurisdiction is conferred upon the state board by the giving of written notice to the department within 30 days of the rendering of the decision, order, or directive from which such appeal is taken. However, the state board does not have jurisdiction with regard to a final equalization notice issued pursuant to Iowa Code section 441.49, unless written notice is given within 10 days of the date of the order in accordance with rule 701—71.15(441).

Notice of appeal to the state board may be given by certified mail, return receipt requested, and addressed to the department of revenue to the attention of the director at Iowa Department of Revenue, Hoover State Office Building, Fourth Floor, 1305 E. Walnut Street, Des Moines, Iowa 50319, or by service on the director as provided by the Iowa Rules of Civil Procedure.

Notice shall be proved by affidavit of mailing signed by the appellant or the appellant's duly authorized representative, with return receipt and a copy of the notice attached, filed with the secretary, or by filing with the secretary a copy of the notice of appeal with return of service attached.

701—2.21(421,17A) Form of appeal. The written notice of appeal shall contain a caption in the following form:

BEFORE THE STATE BOARD OF TAX REVIEW
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF _____ (state taxpayer's name, address and designate type of proceeding, e.g., income tax refund claim)	}	NOTICE OF APPEAL DOCKET NO. (Docket No. is assigned by Board)

The notice of appeal shall substantially state in separate numbered paragraphs the following:

1. The appellant's name and legal residence;
2. The date appellant received the director's decision, order, or directive;
3. The amount of assessment or refund at issue, nature of tax, year or other period, date of assessment or refund denial, and approximate amount of total tax liability in controversy;
4. A clear and concise assignment of each and every error;
5. A clear and concise statement of the facts upon which the affected taxpayer relies as sustaining the assignment of error;
6. The relief requested; and
7. The signature of affected taxpayer or counsel, together with address to which all subsequent correspondence, notice or papers shall be served or mailed.

701—2.22(421,17A) Certification by director. Within 30 days after notice of appeal is given, the director shall certify to the board all records; documents; reports; audits; a copy of the decision, order, or directive from which appeal is taken; and all other pertinent information.

701—2.23(421,17A) Answer. An answer shall be filed with the secretary for the state board within 30 days after the filing of pleading responded to, unless attacked by motion as provided in rule 701—2.5(421,17A). If a motion is filed attacking the pleadings as provided in 701—2.5(421,17A), then the answer shall be filed within 30 days after the date on which the board issues a ruling on the motion.

701—2.24(421,17A) Docketing. Appeals shall be assigned consecutive docket numbers. Records must be maintained by the secretary for the state board consisting of the case name and the corresponding docket number assigned to the case. The records of each case shall also include each action and each act done, with the proper dates as follows:

1. The title of the appeal;
2. Brief statement of the type of tax, year or other period, date of assessment, and the amount involved including tax, penalty, interest and costs;
3. The manner and time of service of notice of appeal;
4. The appearance of all parties;
5. Notice of hearing, together with manner and time of service; and
6. The decision of the state board or other disposition of the case and the date.

701—2.25(421,17A) Appearances by appellant. Any appellant may appear in person or, in the case of corporations, partnerships or other associations, by their duly authorized representative, or by an attorney-at-law or a certified public accountant authorized to practice in the state of Iowa.

701—2.26(421,17A) Place of hearing. Unless otherwise designated by the state board, the hearing shall be held in the office of the State Board of Tax Review, Hoover State Office Building, Fourth Floor, 1305 E. Walnut Street, Des Moines, Iowa 50319.

701—2.27(421,17A) Transcript of hearing. Hearings shall be tape-recorded. Any party may provide a certified court reporter at the party's own expense. Any party may request that a transcription of the tape-recorded hearing be composed. The department reserves the right to impose a charge for transcription services.

701—2.28(421,17A) Requests for contested case proceeding. Any party may request commencement of a contested case proceeding by filing a written request for such a proceeding after the notice of appeal and an answer have been filed.

701—2.29(421,17A) Notice of hearing.

2.29(1) *Delivery.* Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

a. Personal service as provided in the Iowa Rules of Civil Procedure;

b. Certified mail, return receipt requested;

c. First-class mail; or

d. Publication, as provided in the Iowa Rules of Civil Procedure.

2.29(2) *Contents.* The notice of hearing shall contain the following information:

a. A statement of the time, place, and nature of the hearing;

b. A statement of legal authority and jurisdiction under which the hearing is to be held;

c. A reference to the particular sections of the statutes and rules involved;

d. A short and plain statement of the matters asserted. If the state board or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;

e. Identification of all parties including the name, address and telephone number of the parties' representatives where known;

f. Reference to the procedural rules governing conduct of the contested case proceeding;

g. Identification of the presiding officer, if known. If the identity of the presiding officer is not known, a description of who will serve as presiding officer;

h. Notification of the time period in which a party may request that the presiding officer be an administrative law judge; and

i. Whether the state board on its own motion has decided to transfer the case to the division of administrative hearings.

701—2.30(17A) Presiding officer.

2.30(1) *Request.* Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 30 days after service of a request for commencement of a contested case proceeding as provided in 701—2.28(421,17A).

2.30(2) *Denial of request.* The state board may deny the request only upon a finding that one or more of the following apply:

a. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare;

b. An administrative law judge with the qualifications identified in subrule 2.30(4) is unavailable to hear the case within a reasonable time;

c. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented;

d. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues;

e. Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal;

f. The request was not timely filed;

g. The request is not consistent with a specified statute; or

h. The state board based on its discretion may wish to retain the case due to the subject matter of the case or issues involved in the case.

2.30(3) *Ruling on request.* The state board shall issue a written ruling specifying the grounds for its decision within 30 days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge with the qualifications identified in 2.30(4), the parties shall be notified at least 10 days prior to the hearing if a qualified administrative law judge will not be available.

2.30(4) *Qualifications of the administrative law judge.* An administrative law judge assigned to act as a presiding officer in a case in which the state board has original jurisdiction shall have the following technical expertise unless waived by the state board: The administrative law judge must be an attorney licensed to practice law in the state of Iowa and, based on the discretion of the state board, possess sufficient technical expertise in the area of taxation and related matters to be capable of rendering a fair and competent decision in such cases.

2.30(5) *Appeal of proposed decision by the administrative law judge.* Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the state board. A party must seek any available appeal in order to exhaust adequate administrative remedies.

2.30(6) *Review of interagency appeals.* Unless otherwise provided by law, members of the state board, when reviewing a proposed decision upon interagency appeal, shall have the powers which apply to presiding officers.

701—2.31(421,17A) Transfer of case for hearing or appeal. The secretary for the state board shall transfer the case file to the division of administrative hearings within 30 days of the date of a determination by the state board that the case should be transferred. The parties to the case shall be notified at least 10 days prior to the hearing if a qualified administrative law judge will be available.

The administrative hearings division shall, upon issuance of a proposed decision, promptly forward the record of the contested case proceeding and all other papers associated with the case to the state board, if no timely motion to vacate under rule 701—2.46(421,17A) is filed. If such a motion is filed, the record shall be promptly forwarded after the motion to vacate is denied or a proposed decision is rendered on the merits.

701—2.32(421,17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of division II. However, the state board in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

701—2.33(421,17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

701—2.34(17A,421) Disqualifications of a presiding officer.

2.34(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

a. Has a personal bias or prejudice concerning a party or a representative of a party;

b. Has personally investigated, prosecuted, or advocated in connection with that case, the specific controversy underlying that case, or another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;

c. Is subject to the authority, direction, or discretion of any person who has personally investigated, prosecuted, or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;

d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;

e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

f. Has a spouse or relative within the third degree of relationship who: (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or

g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

2.34(2) Personally investigated. The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators,

unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other functions of the state board, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer or a member of the state board shall be disclosed if required by Iowa Code section 17A.11 and the rules set forth in this division.

2.34(3) Withdrawal. In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

2.34(4) Motion for disqualification. If a party asserts disqualification on any appropriate ground, including those listed in subrule 2.34(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.11. The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification, but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal and a stay as provided under the rules of this division.

701—2.35(421,17A) Consolidation and severance.

2.35(1) *Consolidation.* The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where: (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

2.35(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions of the proceedings severed.

701—2.36(17A) Service and filing of pleadings and other papers.

2.36(1) *When service is required.* Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

2.36(2) *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by in-person delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

2.36(3) *Filing—when required.* All pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the Secretary for the State Board of Tax Review, Hoover State Office Building, Fourth Floor, 1305 E. Walnut Street, Des Moines, Iowa 50319. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the state board at the address for the secretary for the state board as previously stated. Thereafter, once an administrative law judge becomes a presiding officer, such papers will be filed with that administrative law judge.

2.36(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed with the state board or an administrative law judge if one of the following has occurred:

a. At the time it is delivered to the secretary for the state board at the Hoover State Office Building, Fourth Floor, 1305 E. Walnut Street, Des Moines, Iowa 50319, or to the address for the administrative law judge;

b. When delivered to an established courier service for immediate delivery to the Secretary for the State Board, Hoover State Office Building, Fourth Floor, 1305 E. Walnut Street, Des Moines, Iowa 50319, or to the address of the administrative law judge; or

c. When mailed by first-class mail or state interoffice mail to the secretary for the state board at the address indicated above or to the address of the administrative law judge, so long as there is proof of mailing.

2.36(5) *Proof of mailing.* Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

> I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (agency office and address) and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).
>
> (Date) (Signature)

701—2.37(421,17A) Discovery.

2.37(1) *Discovery procedure.* Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

2.37(2) *Discovery motions.* Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 2.37(1). The presiding officer may rule on the basis of the written motion and any response, or may order written or oral arguments on the motion.

2.37(3) *Admissibility of evidence.* Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

701—2.38(421,17A) Subpoenas.

2.38(1) *Issuance.*

a. A subpoena shall be issued to a party on request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

b. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

2.38(2) *Motion to quash or modify.* The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

701—2.39(421,17A) Motions.

2.39(1) *Form.* No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

2.39(2) *Response.* Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the agency or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

2.39(3) *Oral argument.* The presiding officer may schedule oral argument on any motion.

2.39(4) *Deadline.* Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the state board or an order of the presiding officer.

2.39(5) *Motions for summary judgment.* Motions for summary judgment shall comply with requirements of Iowa Rule of Civil Procedure 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

Motions for summary judgment must be filed and served at least 45 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or written submission shall be not less than 30 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to appeal or rehearing pursuant to these rules.

701—2.40(421,17A) Prehearing conference.

2.40(1) *Request.* Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall not be scheduled less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the state board to all parties. For good cause, the presiding officer may permit variances from this rule.

2.40(2) *Prehearing information.* Each party shall bring to the prehearing conference the following:

a. A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names;

b. A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them; and

c. Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

2.40(3) *Permissible prehearing conference actions.* In addition to the requirements of subrule 2.40(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

c. Identify matters which the parties intend to request be officially noticed;

d. Enter into stipulations for waiver of any provision of law; and

e. Consider any additional matters which will expedite the hearing.

2.40(4) *Telephone.* Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

701—2.41(421,17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

2.41(1) *Application.* A written application for a continuance shall:

a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that

request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible.

2.41(2) *Factors in determining a continuance.* In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;
b. The interests of all parties;
c. The likelihood of informal settlement;
d. The existence of an emergency;
e. Any objection;
f. Any applicable time requirements;
g. The existence of a conflict in the schedules of counsel, parties, or witnesses;
h. The timeliness of the request; and
i. Other relevant factors.

The presiding officer may require documentation of any grounds for continuance.

701—2.42(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing. Unless otherwise provided, a withdrawal shall be with prejudice.

701—2.43(421,17A) Intervention.

2.43(1) *Motion.* A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

2.43(2) *When filed.* Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 30 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

2.43(3) *Grounds for intervention.* The movant shall demonstrate that: (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

2.43(4) *Effect of intervention.* If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

701—2.44(421,17A) Hearing procedures.

2.44(1) *Authority of presiding officer.* The presiding officer presides at the hearing, and may rule on motions, require briefs, issue a decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

2.44(2) *Objections.* All objections shall be timely made and stated on the record.

2.44(3) *Representation.* Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

2.44(4) *Participation in hearing.* Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

2.44(5) *Decorum.* The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

2.44(6) *Sequestration.* Witnesses may be sequestered during the hearing.

2.44(7) *Conduct of the hearing.* The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

b. The parties shall be given an opportunity to present opening statements;

c. Parties present their cases in the sequence determined by the presiding officer;

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter and shall be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law; and

e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

701—2.45(421,17A) Evidence.

2.45(1) *Admissibility.* The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

2.45(2) *Stipulations.* Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

2.45(3) *Scope of admissible evidence.* Evidence in the proceeding shall be confined to the issues about which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

2.45(4) *Exhibits.* The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

2.45(5) *Objection.* Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

2.45(6) *Offer of proof.* Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

701—2.46(421,17A) Default or dismissal.

2.46(1) Grounds. If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

2.46(2) Moving for default. Where appropriate and not contrary to law, any party may move for default against a party who has failed to file a required pleading, has failed to pursue, or has failed to appear after proper service.

2.46(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated. A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

2.46(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision of the motion to vacate.

2.46(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion if a request to do so is included in that party's response.

2.46(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" as interpreted in the case of *Purethane, Inc. v. Iowa State Board of Tax Review*, 498 N.W.2d 706 (Iowa 1993).

2.46(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party.

2.46(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

2.46(9) A default decision may award any relief consistent with the request for relief made in the pleadings and embraced in the issues.

2.46(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay.

701—2.47(421,17A) Ex parte communication.

2.47(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following the issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such a case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the state board. Nothing in this provision is intended to preclude the presiding officer from seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating, prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties. Any communication received by the presiding officer from those persons cannot directly or indirectly communicate any ex parte communications the receipt of which is prohibited under the Iowa Rules of Civil Procedure and the Code of Ethics. In addition, any communication received by the presiding officer cannot furnish, augment, diminish, or modify the evidence in the record.

2.47(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

2.47(3) Written, oral, or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

2.47(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided to all parties or their representatives and may be supplemented by telephone, facsimile,

electronic mail or other means of notification. Where permitted, oral communications may be initiated through a telephone conference call including all parties or their representatives.

2.47(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

2.47(6) Other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 2.47(2).

2.47(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines.

2.47(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the period in which a contested case is pending must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order, or disclosed if an appropriate order is made. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

2.47(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13 or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

2.47(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the state board. Violation of ex parte communication prohibitions by state board personnel shall be reported to the secretary for the State Board of Tax Review, Hoover State Office Building, Fourth Floor, 1305 E. Walnut Street, Des Moines, Iowa 50319, for possible sanctions, including censure, suspension, dismissal, or other disciplinary action.

701—2.48(421,17A) Recording costs. Upon request, the state board shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

701—2.49(421,17A) Interlocutory appeals. Upon written request of a party or on its own motion, the state board may review an interlocutory order of a presiding officer. In determining whether to do so, the state board shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the state board at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

701—2.50(421,17A) Final decision.

2.50(1) When the state board presides over the reception of evidence at the hearing, its decision is a final decision.

2.50(2) When the state board does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the state board without further proceedings unless there is a timely motion to vacate under rule 701—2.46(421,17A), or an appeal to, or review on motion of, the state board within the time provided in rule 701—2.51(421,17A).

701—2.51(421,17A) Applications for rehearing.

2.51(1) *Who may file.* Any party to a contested case proceeding may file an application for rehearing from a final order.

2.51(2) *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the decision on the existing record and whether, on the basis of the grounds enumerated in subrule 2.51(3), the applicant requests an opportunity to submit additional evidence.

2.51(3) *Time of filing.* The application for rehearing shall be filed with the state board within 30 days after issuance of the final decision.

2.51(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record that are joining in the application for rehearing. If the application does not contain a certificate of service, the state board shall serve copies on all parties.

2.51(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the agency grants the application within 30 days after its filing.

701—2.52(421,17A) Stays of agency and board actions.

2.52(1) *When available.* Any party to a contested case proceeding may petition the state board for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition for a stay shall state the reasons justifying a stay or other temporary remedy.

2.52(2) *When granted.* In determining whether to grant a stay, the state board shall consider the factors listed in Iowa Code section 17A.19(5).

2.52(3) *Vacation.* A stay may be vacated by the state board upon application of the department or any other party.

701—2.53(421,17A) No factual dispute contested case. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs, and oral argument should be submitted to the state board for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

701—2.54(421,17A) Appeal and review of a state board decision. Either party may appeal a final decision issued by the state board. An appeal from a final state board decision is termed "judicial review of an agency decision," which is governed by Iowa Code section 17A.19.

These rules are intended to implement Iowa Code chapter 17A and Iowa Code sections 421.1, 421.2 and 441.49.

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CHAPTER 3
VOLUNTARY DISCLOSURE PROGRAM

701—3.1(421,422,423) Scope of the voluntary disclosure program. Any person located outside of Iowa who is subject to Iowa tax or tax collection responsibilities may be eligible for the voluntary disclosure program. Being subject to Iowa tax may occur when a person has Iowa source income or has representatives or other presence in Iowa. Certain activities by such persons may create Iowa tax return filing requirements for Iowa source income, as defined in 701—subrule 3.1(1), not previously reported. In addition, activities may also result in tax liabilities that are past due and owing.

The purpose of the voluntary disclosure program is to encourage unregistered business entities and persons to voluntarily contact the department regarding unreported Iowa source income. The person or the person's representative may initially contact the department on an anonymous basis. Anonymity of the taxpayer can be maintained until the voluntary disclosure agreement is executed by the taxpayer and the department.

The voluntary disclosure program may be used by the department and the taxpayer to report previous periods of Iowa source income and to settle outstanding tax, penalty and interest liabilities, but it must also ensure future tax compliance by the taxpayer.

3.1(1) *Type of taxes eligible.* Only taxes, penalties and interest related to Iowa source income are eligible for settlement under the voluntary disclosure program. For purposes of this rule, "Iowa source income" means the tax base and the tax collection responsibility for the following enumerated taxes: corporate income tax, franchise tax, fiduciary income tax, withholding income tax, individual income tax, local option school district income surtax, state sales tax, state use tax, motor fuel taxes, cigarette and tobacco taxes, and local option taxes.

3.1(2) *Eligibility of the taxpayer.* The department has discretion to determine who is eligible for participation in the voluntary disclosure program. In making the determination, the department may consider the following factors:

a. The location of the person must be outside of Iowa;

b. The person must be subject to Iowa tax on Iowa source income or have Iowa tax collection responsibilities;

c. The person must not currently be under audit or examination by the department or under criminal investigation by the department;

d. The person must not have had any prior contact with the department or a representative of the department which could lead to audit or assessment associated with the tax types or tax periods sought to be addressed under the program;

e. The type and extent of activities resulting in Iowa source income;

f. Failure to report the Iowa source income or pay any liability was not due to fraud, intentional misrepresentation, an intent to evade tax, or willful disregard of Iowa tax laws; and

g. Any other factors which are relevant to the particular situation.

3.1(3) *Application to participate in the voluntary disclosure program.* To apply for the voluntary disclosure program, the person or the person's representative must submit a written application to the Nonfiler Unit, Compliance Division, Iowa Department of Revenue, P.O. Box 10456, Des Moines, Iowa 50306-0456. To be valid, an application must include the following:

a. The types of taxes involved;

b. Separate statements evidencing compliance with each of the eligibility requirements set forth in 701—subrule 3.1(2);

c. A complete and accurate description of the person's activities resulting in Iowa source income, the source of the Iowa source income or Iowa tax collection responsibilities, the type and dates, if available, of the activities in Iowa, a description of the product or service sold in Iowa, and the number of activity occurrences in Iowa per year or whether the activities in Iowa per year were continuous;

d. The reason for noncompliance with Iowa tax law;

e. An estimation of the amount of unpaid Iowa tax by the tax type and applicable tax period(s); and

f. Any other matters which are relevant to the particular situation.

The department reserves the right to request additional information that the department determines is necessary to determine or approximate the liability due, and to determine the applicant's eligibility, the accuracy of information presented and statements asserted by the applicant, and the terms of the voluntary disclosure agreement.

3.1(4) *Acceptance or rejection of an application for the voluntary disclosure program.* The department has the discretion to determine if an applicant meets all of the requirements for the voluntary disclosure program. The department will notify an applicant in writing regarding whether the applicant's application for participation in the program is accepted or rejected.

Rejection of an application prior to the execution of an agreement may be based on the applicant's ineligibility; the applicant's noncompliance in submitting information, documents, evidence, or returns within the time period as requested by the department; misrepresentation of a material fact by the applicant or the applicant's representative; or the department's determination that the matter may be best handled by using other means of administration.

3.1(5) *Terms of the voluntary disclosure agreement.* The department has the discretion to settle all outstanding Iowa source income tax, penalty and interest liabilities of the eligible applicant. Settlement terms are on a case-by-case basis. The existence of the voluntary disclosure agreement and the terms of the agreement are to be held confidential by all parties to the agreement. Items considered by the department in determining the settlement terms include: the type of tax; the tax periods at issue; the reason for noncompliance; whether the tax is a trust fund tax; the types of activities resulting in the Iowa source income; the frequency of the activities that resulted in the Iowa source income; and any other matters which are relevant to the particular situation.

If a taxpayer initiates the contact with the department and is eligible for the voluntary disclosure program and complies with the agreement terms, the maximum prior years for which the department will generally audit and pursue settlement and collection will be five years, absent an intent to defraud, the making of material misrepresentations of fact, or an intent to evade tax.

All voluntary disclosure agreements must require that the applicant file future Iowa tax returns, unless the activity by the applicant resulting in the Iowa source income has changed or there has been a change in the law, rules, or court cases which dictate a different result.

The department reserves the right to audit all returns, spreadsheets or other documents submitted by the applicant or a third party to verify the facts and whether the terms of the voluntary disclosure agreement have been met. The department may audit information submitted by the applicant at any time within the allowed statutory limitation period. The department may also assess any tax, penalty, and interest found to be due in addition to the amount of original tax reported. The statute of limitations for assessment and statute of limitations for refunds begin to run as provided by law.

3.1(6) *Commencement of the voluntary disclosure agreement.* The voluntary agreement commences on the date of the execution of the voluntary disclosure agreement. Execution of the agreement is complete when the agreement is executed by the taxpayer and the department's authorized personnel. Prior to the execution of the voluntary disclosure agreement by the taxpayer and the department, the taxpayer is not protected from the department's regular audit process if the identity of the taxpayer, as an applicant, is unknown to the department. However, if the department has knowledge of the taxpayer's identity, as an applicant, the department will not take audit action against the taxpayer during the voluntary disclosure process. However, if a voluntary disclosure agreement is not reached, the department may assess tax, penalty and interest as provided by law at the time the identity of the applicant becomes known to the department.

3.1(7) *Voiding a voluntary disclosure agreement.* The department also has the authority to declare a voluntary disclosure agreement null and void subsequent to the execution of the agreement. The department may void the contractual agreement if the department determines that a misrepresentation of a material fact was made by the person or a third party representing the person to the department. The department may also void a voluntary disclosure agreement if the department determines any of the following has occurred:

a. The person does not submit information requested by the department within the time period specified by the department, including any extensions granted by the department;

b. The person fails to file future Iowa returns as agreed to in the voluntary disclosure agreement;

c. The person does not pay the agreed settlement liability within the time period designated by the department, including any extensions of time that may be granted by the department;

d. The person does not remit all taxes imposed upon or collected by the person for all subsequent tax periods and all tax types that are subject to the voluntary disclosure agreement;

e. The person fails to prospectively comply with Iowa tax law. Whether the person has failed to prospectively comply with Iowa tax law is determined by the department on a case-by-case basis;

f. The person, based on a determination by the department, materially understates the person's tax liability; or

g. The person has made a material breach of the terms of the voluntary disclosure agreement.

Voiding of the agreement results in nonenforceability of the agreement by the applicant and allows the department to proceed to assess tax, penalty and interest for that person's Iowa source income or tax collection responsibilities for all periods within the statute of limitations. The department reserves the right to audit all returns, spreadsheets or other documents submitted by the applicant or a third party and to make an assessment for all tax, penalty and interest owed, if the applicant is justifiably rejected for the voluntary disclosure program or the agreement between the person and the department is declared by the department to be null and void.

If the voluntary disclosure agreement is voided or the application for the program is rejected and the department issues an assessment, the taxpayer may protest the assessment pursuant to 701—Chapter 7 and raise the issue of the propriety of voiding the voluntary disclosure agreement or rejecting the application. If the department does not issue an assessment, but does reject the application or voids the agreement, such action is not subject to appeal under 701—Chapter 7, but is considered to be "other agency action" as set forth in Iowa Code section 17A.19(3). See *Purethane Inc. v. Iowa State Board of Tax Review*, 498 N.W.2d 706 (Iowa 1993).

3.1(8) *Partnerships, partners, "S" corporations, shareholders in "S" corporations, trusts, and trust beneficiaries.* Once the department has initiated an audit or investigation of any type of partnership, partners of the partnership, "S" corporations, a shareholder in an "S" corporation, a trust, or trust beneficiaries, the department is deemed to have initiated an audit or investigation of the entity and of all those who receive Iowa source income from or have an interest in such an entity for purposes of eligibility under subrule 3.1(2) for participation in the voluntary disclosure program.

3.1(9) *Transfer or assignment.* The terms of the voluntary disclosure agreement are valid and enforceable by and against all parties, including their transferees and assignees.

3.1(10) *Confidentiality.* The terms of each voluntary disclosure contract are determined on a case-by-case basis. Except as may be specifically required by law or preexisting written agreement, the existence of a voluntary disclosure agreement and the terms of the voluntary disclosure agreement are to be held confidential by the parties to the voluntary disclosure agreement, their representatives, transferees, and assignees. Disclosure of the existence of a voluntary disclosure agreement or the terms of such an agreement in a manner contrary to this rule may result in the agreement being declared null and void at the discretion of the nondisclosing party.

These rules are intended to implement Iowa Code section 421.17.

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CHAPTER 4
MULTILEVEL MARKETER AGREEMENTS

701—4.1(421) Multilevel marketers—in general. Multilevel marketer companies may enter into a written contract with the department to collect and remit state and local option sales taxes on sales of tangible personal property to independent distributors for resale and remit the taxes directly to the department. To be eligible for the multilevel marketer's program, the company must meet certain eligibility requirements and agree to certain terms in the multilevel marketer agreement as set forth in 701—subrules 4.1(3) and 4.1(4). All written contacts with the department should be sent to Nonfiler Unit, Compliance Division, Iowa Department of Revenue, P.O. Box 10456, Des Moines, Iowa 50306-0456.

4.1(1) *Definitions.* The following definitions of terms are applicable to this chapter:

"Independent distributor" means a seller who purchases products for resale to an Iowa consumer based on a price suggested by a multilevel marketer.

"Multilevel marketer" means a wholesaler that sells tangible personal property for resale via a network of independent distributors who then sell the property to the ultimate consumers located in Iowa at a retail price suggested by the multilevel marketer.

"Sales tax" or *"sales taxes"* for the purpose of this rule means Iowa state sales tax, including local option sales and service taxes, and state use tax. To determine if local option sales and service taxes are due, see 701—107.2(422B), 701—107.3(422B), and 701—108.3(422E).

4.1(2) *Collection of tax.* Iowa state sales tax is to be collected on the wholesale or retail selling price if delivery of the multilevel marketer's tangible personal property occurs in Iowa or the property is used in Iowa (see subparagraph 4.1(4)*"a"*(1) for further details). In addition, local option sales tax is due on the sale if delivery of the tangible personal property to the consumer occurs within a local option tax jurisdiction. See information and examples illustrating delivery and taxation in 701—107.2(422B), 701—107.3(422B), and 701—108.3(422E).

4.1(3) *Eligibility requirements.* To be eligible for a multilevel marketer agreement as a multilevel marketer, the following criteria must be met:

a. Tangible personal property is sold by the multilevel marketer to an independent distributor for resale to an Iowa end user or for a distributor's personal use.

b. Unless authorized by the department, the multilevel marketer must not have been previously required to be registered to remit sales tax.

c. The multilevel marketer must have contacted the department with a request to collect and remit sales taxes directly to the department on sales made by an independent distributor.

d. The multilevel marketer must not be under audit or examination by the department on the effective date of the agreement.

The department has full discretion to determine if a multilevel marketer meets the eligibility requirements for a multilevel marketer agreement. The department can request any and all information and documentation necessary to determine whether eligibility requirements are met. Failure to timely submit information and documents requested by the department will result in the department's refusal to enter into an agreement with the multilevel marketer.

4.1(4) *Terms of the multilevel marketer agreement.* The multilevel marketer agreement will become effective on the date an authorized representative of the multilevel marketer executes the agreement. Unless terminated in accordance with subrule 4.1(5), the multilevel marketer agreement remains in effect as long as the multilevel marketer has an independent distributor making sales in Iowa. Terms of agreements are based on results of negotiations between the multilevel marketer and the department. However, the following general terms must be in each multilevel marketer agreement:

a. The multilevel marketer agrees to the following terms:

(1) The multilevel marketer agrees to collect tax on the following three types of sales, excluding sales properly exempt from tax and evidenced by a valid exemption certificate:

1. The multilevel marketer agrees to collect sales tax from the independent distributors based on the suggested retail price of its product;

2. If the multilevel marketer allows independent distributors to purchase its product at a wholesale price for the distributor's personal use, then the multilevel marketer agrees to collect sales tax on sales which are based on the wholesale price to the independent Iowa distributor, unless the department waives this requirement; and

3. The multilevel marketer agrees to collect sales tax on all retail sales by the multilevel marketer to consumers that are subject to sales tax;

(2) The multilevel marketer will timely remit sales tax on transactions described in subparagraph 4.1(4)*"a"*(1);

(3) The multilevel marketer will maintain records to establish the accuracy of the sales tax returns within the applicable statutes of limitation;

(4) The multilevel marketer agrees that the sales tax shall be added to the retail price charged to the consumer, as required by Iowa Code section 422.48;

(5) The multilevel marketer agrees to be subject to audit and to pay any tax, penalty, and interest that are ultimately found to be legally due and that were required to be collected by the multilevel marketer under Iowa law, these rules and the multilevel marketer agreement;

(6) The multilevel marketer agrees to abide by the rules in 701—Chapter 4; and

(7) The multilevel marketer agrees to register for an Iowa retailer's use tax permit.

b. The department agrees to the following terms:

(1) The department will not audit, assess or demand payment of sales tax, penalty or interest from the multilevel marketer for any tax periods ending before the effective date of the multilevel marketer agreement, unless the multilevel marketer had a permit registration with the department prior to the effective date of this multilevel marketing agreement. If a multilevel marketer had a permit registration with the department prior to the effective date of this multilevel marketing agreement, the department may audit, assess, refund, or demand payment of tax, penalty, and interest from the multilevel marketer for any of those previous tax periods within the applicable statute of limitation.

(2) Unless required for transactions outside the multilevel marketer agreement, the department will not require the multilevel marketer to retroactively register for an Iowa sales tax permit or file Iowa sales tax returns for periods ending on or before the effective date of this agreement.

(3) The department agrees to allow a deduction from taxable sales reported by the multilevel marketer for merchandise returned by an independent distributor for which tax has already been paid to the department and for which the multilevel marketer, via the distributor, has allowed a credit or refund of the tax to the consumer.

c. Other general agreement terms:

(1) The multilevel marketer agreement is binding upon all parties, including their successors and assignees; and

(2) The terms, provisions, interpretations and enforcement of the multilevel marketer agreement are to be governed by the laws of the state of Iowa.

d. Refunds. Refunds for any overpayment of taxes paid by a consumer as a result of a multilevel marketer agreement should be claimed on the proper Iowa refund claim form as designated by the director.

Under this agreement, if the retail sale is made by an Iowa retailer to an out-of-state consumer, the multilevel marketer agrees to forego any claim for refund of tax which was paid on such sale.

4.1(5) *Termination of a multilevel marketer agreement.* If any of the following events occur, an executed multilevel marketer agreement may be declared null and void:

a. Termination of a multilevel marketer agreement at the department's discretion.

(1) The multilevel marketer has misrepresented any material fact regarding its activities, operations, tax liabilities, or eligibility under the agreement.

(2) It is determined by the department that the multilevel marketer had been notified that it was to be or was under audit by the department prior to the time the multilevel marketer executed the multilevel marketer agreement.

b. Termination of a multilevel marketer agreement by mutual agreement of the parties.

(1) Change occurs in law that impacts the tax liability subject to the multilevel marketer agreement.

(2) Collection and remittance of sales tax as required under the agreement are more feasible by other means.

Written notice of termination will be promptly given by the department in the event of termination under paragraph 4.1(5)*"a."* To accommodate the time necessary to effectuate changes by the multilevel marketer and the department, the effective date of the termination of the multilevel marketer agreement shall be 60 days from the date of the notice of the written termination, unless a request for additional time is made by the multilevel marketer and the request is granted by the department.

4.1(6) *Liability of independent distributors.* After execution of a multilevel marketer agreement, an independent distributor must collect, report, and remit to the department, unless remitted to the multilevel marketer, any and all sales taxes that the independent distributor is required to collect, report, and remit that exceed the amount of tax that the independent distributor has previously remitted to the multilevel marketer company. If such excess tax is remitted to the multilevel marketer, the multilevel marketer shall report and remit the tax to the department.

EXAMPLE 1. An independent distributor purchased products from the multilevel marketer at the wholesale price because the distributor thought that the product would be for the personal use of the distributor. The distributor paid Iowa tax based on the wholesale price to the multilevel marketer and the multilevel marketer remitted the tax to the state of Iowa. Subsequently, the distributor resold the product to an Iowa customer at a retail price, which is greater than the wholesale price. The distributor is required to charge Iowa tax on the retail price. The distributor is also required to report and remit directly to the department or the multilevel marketer the difference between the tax previously paid on the wholesale price and the tax collected on the retail price from the Iowa customer.

EXAMPLE 2. An independent distributor purchased products from a multilevel marketer for resale at the retail price suggested by the multilevel marketer. Tax was collected by the multilevel marketer from the independent distributor on the suggested retail price of the products and remitted to the department by the multilevel marketer. The independent distributor subsequently sold the product to an Iowa customer for a price greater than the suggested retail price. The independent distributor is required to charge Iowa tax on the full sale price. The independent distributor is also required to report and remit directly to the department or to the multilevel marketer the difference between the tax previously paid on the suggested retail price and the tax collected on the price charged the Iowa customer.

If an independent distributor makes sales that are exempt from sales taxes, then the independent distributor must obtain a valid exemption certificate from the purchaser to evidence the transaction and provide a copy of the completed exemption certificate to the multilevel marketer who has the multilevel marketer agreement with the department.

4.1(7) *Legislative changes.* All multilevel marketer agreements are subject to all applicable legislative enactments which are made subsequent to the agreement and which impact the agreement.

These rules are intended to implement Iowa Code sections 421.5 and 421.17.

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CHAPTER 5
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The Iowa department of revenue adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to public records and fair information practices which are printed in the first volume of the Iowa Administrative Code. Uniform Rules X.1(17A,22) to X.8(17A,22) appear as rules 5.1(17A,22) to 5.8(17A,22). The following rules in this chapter may reference rules that have not been adopted and, therefore, the text of such rules is not set forth in this chapter. Reference to these types of rules is only for the purpose of reference and is not intended for the purpose of adopting the referenced rules in their entirety.

701—5.1(17A,22) Definitions. As used in this chapter:

"Agency." In lieu of "(official or body issuing these rules)" insert "department of revenue."

701—5.3(17A,22) Requests for access to records.

5.3(1) *Location of record.* In lieu of "(insert agency head)" insert "director". In lieu of "(insert agency name and address)" insert "Iowa Department of Revenue, Taxpayer Services, Box 10457, Des Moines, Iowa 50306".

5.3(2) *Office hours.* In lieu of "(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)" insert "8 a.m. to 4:30 p.m. daily excluding Saturdays, Sundays, and legal holidays".

5.3(7) *Fees.*

c. *Supervisory fee.* In lieu of "(specify time period)" insert "one-half hour". In lieu of "(An agency wishing to deal with search fees authorized by law should do so here.)" insert "An hourly fee may be charged for actual agency expenses in searching for requested records when the time required for searching for a combination of searching, supervision and copying is in excess of one-half hour."

701—5.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. Strike the words "or to (designate office)".

701—5.9(17A,22) Disclosures without the consent of the subject.

5.9(1) Open records are routinely disclosed without the consent of the subject.

5.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in subrule 5.10(1) or in any notice for a particular record system.

b. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.

e. To the legislative services agency.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

701—5.10(17A,22) Routine use.

5.10(1) Defined. "Routine use" means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records laws, Iowa Code chapter 22.

5.10(2) To the extent allowed by law, the following uses are considered routine uses of all agency records:

a. Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may upon request of any officer or employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

c. Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.

d. Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

e. Information released to staff of federal and state entities for audit purposes for purposes of determining whether the agency is operating a program lawfully.

f. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

701—5.11(17A,22) Consensual disclosure of confidential records.

5.11(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 5.7(17A,22).

5.11(2) *Complaints to public officials.* A letter from the subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may to the extent permitted by law be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

701—5.12(17A,22) Release to subject.

5.12(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 5.6(17A,22). However, the agency need not release the following records to the subject:

a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

c. Peace officer's investigative reports may be withheld from the subject, except as required by Iowa Code. (See Iowa Code section 22.7(5).)

d. As otherwise authorized by law.

5.12(2) Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

701—5.13(17A,22) Availability of records.

5.13(1) *General.* Agency records are open for public inspection and copying unless otherwise provided by rule or law.

5.13(2) *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Sealed bids received prior to the time set for public opening of bids. (Iowa Code section 72.3.)

b. Records which are exempt from disclosure under Iowa Code section 22.7.

c. Minutes of closed meetings of a government body (Iowa Code section 21.5(4)).

d. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1)*"d."*

e. Those portions of agency staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by agency staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:

(1) Enable law violators to avoid detection;

(2) Facilitate disregard of requirements imposed by law; or

(3) Give a clearly improper advantage to persons who are in an adverse position to the agency. (See Iowa Code sections 17A.2 and 17A.3.)

f. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 122(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

g. Corporate income return systems, corporate income tax field and office audit systems, related field collections system, and corporate tax error resolution system (Iowa Code section 422.20).

h. Individual and fiduciary income returns, individual and fiduciary income tax field and office audit systems, and related field collections system (Iowa Code section 422.20, 422.72, and 450.68).

i. Individual income tax withholding system, IA-W4 system, declaration of estimated tax, and withholding penalty waiver systems (Iowa Code sections 422.20 and 422.72).

j. Penalty waiver, abatement, and settlement systems (Iowa Code sections 421.5, 422.20, and 422.72).

k. Franchise tax returns, audit and collection systems (Iowa Code section 422.72).

l. Sales and use tax returns, field and office audit and collections systems, sales tax refund examination system, industrial machinery, equipment, and computer refund systems, and sales and use tax penalty waiver systems (Iowa Code section 422.72).

m. Motor vehicle fuel, railway fuel tax, and special fuel tax return and error resolution systems, and related field and office audit and collection systems (Iowa Code section 452A.63).

n. Inheritance, generation skipping transfer, qualified use inheritance and estate tax returns, field and office audit systems, and related field collections system (Iowa Code section 450.68).

o. Federal and state exchange of information systems (Iowa Code sections 422.20(2) and 422.72).

p. Cigarette and tobacco tax systems with related office and field audit and field collections systems (Iowa Code section 22.7(6)).

q. Property assessor and deputy assessor examination records systems (Iowa Code section 441.5).

r. Central property tax assessments systems (Iowa Code sections 422.20 and 22.7(6)).

s. Elderly credit mobile home system (Iowa Code section 425.28).

t. Iowa disabled and senior citizen property tax and special assessment credit systems (Iowa Code section 425.28).

u. Local option sales and services tax system (Iowa Code section 422.72).

v. New job tax credit system (Iowa Code section 422.20).

w. Corporate and franchise estimated tax systems (Iowa Code section 422.20).

x. Hotel and motel tax system (Iowa Code section 422.72).

y. The work product portion of the hearing officer case files (Iowa Code subsection 22.7(4)).

z. Permit application and maintenance systems (Iowa Code sections 22.7(6), 452A.63, 422.20, and 422.72).

aa. Taxpayer contact systems (Iowa Code subsection 22.7(18) and any relevant tax confidentiality sections).

bb. Centralized payroll and department personnel and payroll systems to the extent covered (Iowa Code subsection 22.7(11)).

cc. Inheritance tax returns, estate tax returns, and generation skipping transfer tax returns (Iowa Code sections 450.68, 450A.12, 450B.7 and 451.12).

dd. Any other records made confidential by law.

5.13(3) *Authority to release confidential records.* The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 5.4(17A,22). If the agency initially determines that it will release such records, the agency may where appropriate notify interested parties and withhold the records from inspection as provided in subrule 5.4(3).

This rule is intended to implement Iowa Code sections 421.17 and 422.72 and chapters 450, 450A, 450B, and 451 and 2003 Iowa Acts, chapter 178, sections 66 through 121.

701—5.14(17A,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 5.1(17A,22).

5.14(1) *Retrieval.* Personal identifiers may be used to retrieve information from any of the systems of records that the agency maintains that contain personally identifiable information.

5.14(2) *Means of storage.* Paper, microfilm, microfiche, and various electronic means of storage are used to store records containing personally identifiable information.

5.14(3) *Comparison.* Electronic or manual data processing may be used to match, to collate, or to compare personally identifiable information in one system with personally identifiable information in another system of records or with personally identifiable information within the same system.

5.14(4) *Comparison with data from outside the agency.* Personally identifiable information in systems of records maintained by the agency may be compared with information from outside the agency when specified by law. This comparison is allowed in situations including:

a. Determination of any offset of a debtor's income tax refund or rebate for child support recovery or foster care recovery (2003 Iowa Acts, House File 534, section 86);

b. Collection of taxes by collection agencies (Iowa Code subsection 421.17(22));

c. Calculation of any offset against an income tax refund or rebate for default on a guaranteed student loan (2003 Iowa Acts, House File 534, section 86);

d. Offset from any tax refund or rebate for any liability owed a state agency (2003 Iowa Acts, House File 534, section 86);

e. Offset for any debt which is in the form of a liquidated sum due, owing, and payable to the clerk of district court as a criminal fine, civil penalty surcharge, or court costs (2003 Iowa Acts, House File 534, section 86).

5.14(5) *Nature and extent.* All of the record systems listed in subrule 5.14(6) contain personally identifiable information concerning matters such as income, property holdings or exchanges, financial transactions, and demographic information such as address and number of dependents.

5.14(6) *Records systems with personally identifiable retrieval.* The agency maintains the systems of records which contain personally identifiable information as enumerated in the following list. Confidential information as described in subrule 5.13(2) is contained in systems described in the following lettered paragraphs of subrule 5.14(6): *"b"* through *"l," "n," "o," "q," "s,"* through *"v,"* and *"x"* through *"mm."* The legal authority for the collection of the information is listed with the description of the system.

a. Board of tax review agendas, minutes, and presentation materials (Iowa Code section 421.1);

b. Centralized payroll and accounting systems (Iowa Code sections 7A.1, 7A.27, 19A.11, 421.17, 421.32, and 421.40);

c. Corporate income returns, corporate income tax field and office audit systems, related field collections system, and corporate tax error resolution (Iowa Code sections 422.33, 422.41, and 422.85);

d. Individual income returns, individual income tax field and office audit systems, and related field collections system (Iowa Code sections 422.5, 422.13, and 422.14);

e. Individual income tax withholding system, IA-W4 system, declaration of estimated tax, and withholding penalty waiver systems (Iowa Code sections 422.15 and 422.16);

f. Penalty waiver, abatement, and settlement systems (Iowa Code sections 422.25 and 422.28);

g. Franchise tax returns and audit and collection systems (Iowa Code sections 422.60, 422.66, and 422.85);

h. Sales and use tax returns, field and office audit and collection systems, sales tax refund examinations system, and sales and use tax penalty waivers systems (Iowa Code sections 422.43, 422.54, and 423.2);

i. Motor vehicle fuel tax return and error resolution systems, and related field audit and collection systems (Iowa Code chapter 452A);

j. Inheritance, generation-skipping transfer, qualified use inheritance and estate tax systems, related field and office audit systems, and related field collections systems (Iowa Code sections 450.66, 450.67, 450.71, 450.81, 450.88, 450.94, 450.97, 450A.8, 450A.11, 450A.12, 450B.7, 451.5, 451.11, and 451.12);

k. Federal and state exchange of information systems for tax administration (Iowa Code sections 422.20 and 422.72);

l. Cigarette and tobacco tax systems with related office and field audit and field collections system (Iowa Code chapter 453A);

m. Hearing officer case files (Iowa Code sections 17A.11 to 17A.18);

n. Property assessor assistance, provisional assessor training, and property assessor and deputy assessor examinations (Iowa Code sections 421.25, 441.5, and 441.8);

o. Annual assessment sales ratio study system (Iowa Code section 428A.1);

p. Declaration of value system (Iowa Code section 428A.1);

q. Central property tax assessments (Iowa Code sections 433.1, 433.2, 434.1, 434.6, 434.7, 434.8, 434.9, 434.10, 434.11, 434.14, 437.2, 437.4, 438.3, 438.4, 438.6, and 438.12);

r. Real estate transfer tax system (Iowa Code section 428A.1);

s. Elderly credit mobile home system (Iowa Code section 435.22);

t. Elderly credit special assessment system and Iowa disabled and senior citizen property tax and rent reimbursement credit system (Iowa Code sections 425.25, 425.26, and 425.27);

u. Equalization of property appraisals system (Iowa Code subsection 421.17(2));

v. Police officers' and firefighters' retirement system (Iowa Code section 411.20));

w. Tax policy and interpretation and final orders, decision, and opinion files (Iowa Code section 17A.3);

x. Equipment and security inventory systems (Iowa Code sections 7A.30 and 421.17(1));

y. Mailing systems for tax forms and newsletters (Iowa Code subsection 421.17(1));

z. Permit applications and maintenance systems (Iowa Code subsection 421.17(1));

aa. Taxpayer contact systems (Iowa Code subsection 421.17(1));

bb. Department personnel, budget, and payroll systems (Iowa Code sections 7A.1, 19A.9(13), 421.17(1), 421.32, and 421.40);

cc. Local option sales and services tax system (Iowa Code section 422B.9);

dd. Corporate and franchise estimated tax (Iowa Code section 422.85);

ee. New jobs tax credit system (Iowa Code subsection 422.33(7));

ff. Hotel and motel tax system (Iowa Code section 422A.1);

gg. Industrial machinery, equipment, and computers refund system (Iowa Code section 422.47A);

hh. Express company tax system (Iowa Code sections 436.3, 436.4, 436.6, and 436.9);

ii. Farm machinery and equipment refund system (Iowa Code section 422.47B);

jj. Litigation file systems (Iowa Code subsection 421.17(1));

kk. Criminal investigation and charge systems (Iowa Code subsection 421.17(1)).

701—5.15(17A,22) Other groups of records. This rule describes groups of records maintained by the agency other than record systems as defined in rule 5.1(17A,22). These records are routinely available to the public. However, the agency's files of these records may contain confidential information as discussed in rule 5.13(17A,22). The records listed may contain information about individuals.

1. Administrative records. This includes documents concerning budget, property inventory, purchasing, yearly reports, office policies for employees, time sheets, printing and supply requisitions. (See Iowa Code subsection 421.17(1).)

2. Publications. The agency receives a number of books, periodicals, newsletters, government documents, etc. These materials would generally be open to the public but may be protected by copyright law. (See Iowa Code subsection 421.17(1).)

3. Office publications. This agency issues a variety of materials including newsletters, brochures, and pamphlets, press releases, and statistical reports. (See Iowa Code subsection 421.17(1).)

4. Rule-making records. Public documents generated during the promulgation of agency rules, including notices and public comments, are available for public inspection. (See Iowa Code subsection 421.17(1).)

5. Office manuals. Information in office manuals may be confidential under Iowa Code subsection 17A.2(7), paragraph *"f,"* or other applicable provision of law.

6. Legal library (Iowa Code subsection 421.17(1)).

7. Legislation monitoring system (Iowa Code subsection 421.17(1)).

8. All other records that are not exempt from disclosure by law.

701—5.16(17A,22) Applicability. This chapter does not:

1. Require the agency to index or retrieve records which contain information about individuals by that person's name or other personal identifier.

2. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.

3. Govern the maintenance or disclosure of, notification of or access to, records in possession of the agency which are governed by regulations of another agency.

4. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.

5. Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges and applicable regulations of the agency.

This rule is intended to implement Iowa Code chapter 22.

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TITLE I
ADMINISTRATION

CHAPTER 6
ORGANIZATION, PUBLIC INSPECTION

[Prior to 10/7/87, see Revenue Department[730] Ch 6]

701—6.1(17A) Establishment, organization, general course and method of operations, methods by which and location where the public may obtain information or make submissions or requests.

6.1(1) *Establishment of the department.* By an Act of the general assembly (chapter 1245, Acts of the 71st GA), a department of revenue and finance was created in lieu of three separate state agencies. The department is administered by the director with a three-member state board of tax review established within the department for administrative and budgetary purposes. As to the organization and functions of the state board of tax review, see rules contained in 701—Chapters 1 to 5.

Effective July 1, 2003, the Iowa department of revenue and finance is titled the Iowa department of revenue.

The department of revenue in recognizing its responsibilities has adopted the following creed to guide and lend direction to its endeavors:

"The Department of Revenue is dedicated to serving the citizens of Iowa and other public officials, while performing the following mission:

"Collect all taxes due, which any person may be required by law to pay, but no more.

"In carrying out this mission the department resolves to provide the best service possible in a cordial and helpful manner and to provide maximum opportunity and incentive for the professional growth and development of all our employees."

The office of the department is maintained at the seat of government in the Hoover State Office Building, 1305 East Walnut Street, P.O. Box 10460, Des Moines, Iowa 50306.

6.1(2) *Organization.* For ease of administration, the director has organized the department into divisions which are in some instances further divided into bureaus, sections, subsections and units.

6.1(3) *Methods by which and location where the public may obtain information or make submissions or requests.* The department of revenue maintains its principal office in the Hoover State Office Building, 1305 East Walnut Street, P.O. Box 10460, Des Moines, Iowa 50306.

a. Principal office. Members of the public wishing to obtain information or make submissions or requests on any matters may do so at the department's principal office. Applications for permits or licenses may be obtained and submitted at the principal office and any assistance needed in filling out the applications will be provided if the taxpayer so desires. Requests for confidential information should be submitted to the director and the appropriate form will be provided and should be filled out and submitted to the director. Members of the public wishing to inspect information required to be made available to members of the public may do so in the director's office.

b. Regional offices. Regional offices do not have facilities for making available all matters that are available for public inspection under 6.2(17A). The regional offices and auditors do have copies of all rules and will make them available to the public. Members of the public needing forms or needing assistance in filling out forms are encouraged to contact the principal office.

DEPARTMENT OF REVENUE

The department consists of the office of the director; the following divisions: compliance, property tax, revenue operations, internal services, and technology and information management; and the state board of tax review.

THE OFFICE OF THE DIRECTOR

The office of the director consists of the director and the following areas within this office: strategic planning, internal audit, clerk of the hearing section, public/private partnership and research and fiscal analysis.

Essential Functions of the Director's Office:

1. The director's office provides overall management of the agency and reviews protest and revocation cases on appeal.

2. The strategic planning function plans and coordinates the future operations and goals of the department.

3. The director's office provides financial checks and balances within the department.

4. The clerk of the hearing section receives all protests, tracks protests and coordinates protest processing.

5. Public/private partnership provides for a working relationship between the public and private sector.

6. The director's office provides research and data information.

7. The director's office provides fiscal analysis and reporting, which includes fact-finding, defining issues, issue resolution, and projection of revenues, and evaluates the fiscal impact of tax legislation and policies on state budget.

PROPERTY TAX DIVISION

The property tax division provides technical assistance and training to local assessing jurisdictions, ensures equal assessment of property, and is responsible for determining valuation for railroads, electric, water, and pipeline companies.

COMPLIANCE DIVISION

The compliance division includes the examination section, audit services, taxpayer services, policy section, investigative audit section, in-state field offices and out-of-state field offices.

Essential Functions of the Compliance Division:

1. Examination, which includes office examination of returns, assessment, and review and approval of refund claims, and which identifies nonfilers and those that underreport income;

2. Audit services, which includes the development and review of audit programs and completed audits, manuals, and guidelines for auditors, and which coordinates the administrative process of protests and protest resolution;

3. Taxpayer services, which is responsible for responding to inquiries from the public, practitioners and other agencies, and drafting brochures and graphics, completes returns, maintains library and Web page, and coordinates public education by the department;

4. Policy, which is responsible for the interpretation of legislation, statutes and cases, develops and maintains rules for the department and monitors tax-related issues considered by the general assembly and the United States Congress. This section also drafts declaratory orders, offers technical advice and completes studies and reports;

5. Investigative audit, which is responsible for audits for criminal prosecution, reviews cases for potential prosecution and represents the department in criminal proceedings and depositions;

6. In-state field offices provide assistance to taxpayers concerning procedure and perform audits; and

7. Out-of-state field offices perform audits for all taxes throughout the country from nine locations throughout the United States.

INTERNAL SERVICES DIVISION

Essential Functions of the Internal Services Division:

1. Central accounting, which includes operating budget development, maintenance and reporting; and

2. Employee resource team, which governs personnel activities, payroll, benefits, quality of the environment and customer service.

TECHNOLOGY AND INFORMATION MANAGEMENT DIVISION

This division consists of information resources management, application design and development, program management, program evaluation, operations, forms management, reporting, and technical planning and support.

Essential Functions of the Technology and Information Management Division:

1. Application development, which includes system analysis, programming, database administration and support;

2. Forms management, which includes review and performing the function of compliance with federal and state law and managing electronic filing programs; and

3. Technical planning and support, which includes technical support to the agency on software and hardware issues, and which assists in application and development regarding technology-related issues.

REVENUE OPERATIONS DIVISION

This division includes collections (accounts receivable, central collections, field office advanced collections), customer accounts, document processing, and data operations and information technology. Essential Functions of the Revenue Operations Division:

1. Collections, which includes accounts receivable, central collections, advanced collection field offices and customer accounts;

2. Document processing, which includes preparing tax information for processing, deposits and records; and

3. Data entry, which includes entry of all tax forms, files, and databases, and which edits taxpayer documents and mailing information.

This rule is intended to implement Iowa Code sections 421.1, 421.2, 421.9, 421.14, 421.17, 422.1 and 422.72 and 2003 Iowa Acts, chapter 178, sections 66 through 121.

701—6.2(17A) Public inspection. Effective July 1, 1975, Iowa Code section 17A.3(1)*"c"* and *"d"* provides that the department shall index and make available for public inspection certain information. Pursuant to this requirement the department shall:

1. Make available for public inspection all rules;

2. Make available for public inspection and index by subject all written statements of law or policy, or interpretations formulated, adopted, or used by the department in the discharge of its functions;

3. Make available for public inspection and index by name and subject all final orders, decisions and opinions.

Section 17A.3(1)*"c"* and *"d"* also excepts certain matters from the public inspection requirement:

Except as provided by constitution or statute, or in the use of discovery or in criminal cases, the department shall not be required to make available for public inspection those portions of its staff manuals, instructions or other statements issued by the department which set forth criteria or guidelines to be used by its staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases such as operational tactics or allowable tolerances or criteria for the defense, prosecution, or settlement of cases, when the disclosure of such statements would: (1) enable law violators to avoid detection; or (2) facilitate disregard of requirements imposed by law; or (3) give a clearly improper advantage to persons who are in an adverse position to the state.

Identifying details which would clearly warrant an invasion of personal privacy or trade secrets will be deleted from any final order, decision or opinion which is made available for public inspection upon a proper showing by the person requesting such deletion as provided in rules 701—7.15(17A) and 7.42(17A).

Furthermore, the department shall not make available for public inspection or disclose information deemed confidential under Iowa Code sections 422.20 and 422.72.

Unless otherwise provided by statute, by rule or upon a showing of good cause by the person filing a document, all information contained in any petition or pleading shall be made available for public inspection.

All information accorded public inspection treatment shall be made available for inspection in the office of the Policy Section, Compliance Division, Department of Revenue, P.O. Box 10457, Des Moines, Iowa 50306, during established office hours.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

701—6.3(17A) Examination of records. Situations may occur that give rise to the need for state officials, other officers, agents or employees of the state, or other persons based on a court subpoena to review tax returns or information belonging to the department in order to fulfill duties and

responsibilities or to assist in an investigation. However, there are guidelines that govern such reviews, which are as follows:

6.3(1) Upon the express written approval of the director of revenue or administrator of the compliance division, officers or employees of the state of Iowa may examine state tax returns and information belonging to the department to the extent required as part of their official duties and responsibilities. Written approval will be granted in those situations where the officers or employees of the state of Iowa have (1) statutory authority to obtain information from the department of revenue and (2) the information obtained is used for tax administration purposes. Where information is obtained from the department of revenue on a regular basis, the director of revenue may enter into a formal agreement with the state agency or state official who is requesting the information. The agreement will cover the conditions and procedures under which specific information will be released. The following persons do not need written approval from the director of revenue or the administrator of the compliance division to examine state information and returns:

1. Assistant attorneys general assigned to the department of revenue.
2. Local officials acting as representatives of the state in connection with the collection of taxes or in connection with legal proceedings relating to the enforcement of tax laws.
3. The child support recovery unit of the department of human services and other state agencies and subdivisions of the state that are set forth in Iowa Code section 422.17 as amended by 1999 Iowa Acts, chapter 152, section 1, to secure a taxpayer's name and address per the terms of an interagency agreement. (Also see Iowa Code section 252B.9)
4. Workforce development department per the terms of an interagency agreement.
5. The legislative services agency regarding sample individual income tax information to be used for statistical purposes. (Also see Iowa Code section 422.72(1).)
6. The auditor of state, to the extent that the information is necessary to complete the annual audit of the department as required by Iowa Code section 11.2. (Also see Iowa Code section 422.72(1).)

Tax information and returns will not be released to officers and employees of the state who do not meet the requirements set forth above. (See Letter Opinions, November 25, 1981, Richards to Bair, Director of Revenue, and March 4, 1982, Richards to Johnson, Auditor, and Bair, Director of Revenue.)

The director may disclose state tax information, including return information, to tax officials of another state or the United States government for tax administration purposes provided that a reciprocal agreement exists which has laws that are as strict as the laws of Iowa protecting the confidentiality of returns and information.

6.3(2) The director of revenue must provide state tax returns and return information in response to a subpoena issued by the court based on Iowa R. Crim. P. 2.5 commanding the appearance before the attorney general or an assistant attorney general if the subpoena is accompanied by affidavits from such person and from a sworn peace officer member of the department of public safety affirming that the information is necessary for the investigation of a felony violation of Iowa Code chapter 124, "Controlled Substances," or 706B, "Money Laundering." Affidavits accompanying the subpoenas and the information provided by the director of revenue must remain a confidential record and may only be disseminated to a prosecutor, peace officer involved in the investigation, or to the taxpayer who filed the information. In addition, the court in connection with the filing of criminal charges or institution of a forfeiture action may also receive such confidential information.

A person who knowingly files a false affidavit with the director to secure information or who divulges information received under this rule in any manner prohibited by this rule commits a serious misdemeanor.

This rule is intended to implement Iowa Code sections 252B.9, 421.18, 421.19, 422.20, 422.72, and 452A.63.

701—6.4(17A) Copies of proposed rules. A trade or occupational association, which has registered its name and address with the department of revenue, may receive, by mail, copies of proposed rules. Registration of the association's name and address with the department is accomplished by written notification to the Administrator, Compliance Division, Department of Revenue, Hoover State Office

Building, Fourth Floor, Des Moines, Iowa 50319. In the written notification, the association must designate, by reference to rule 701—7.36(421,17A), the type of proposed rules and the number of copies of each rule it wishes to receive. If the association wishes to receive copies of proposed rules not enumerated in rule 701—7.36(421,17A), it may make a blanket written request at the time of registration or at any time prior to the adoption of such rules. A charge of 20 cents per single-sided page shall be charged to cover the actual cost of providing each copy of the proposed rule. In the event the actual cost exceeds 20 cents for a single-sided page, it will be billed accordingly.

This rule does not prevent an association which has registered with the department in accordance with this rule from changing its designation of types of proposed rules or number of copies of proposed rules which the association desires to receive. If an association makes such changed designation, it must do so by written notification to the Administrator, Compliance Division, Department of Revenue, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319.

This rule is intended to implement Iowa Code section 17A.4 as amended by 1998 Iowa Acts, chapter 1202.

701—6.5(17A) Regulatory analysis procedures. Any small business as defined in Iowa Code section 17A.4A [1998 Iowa Acts, chapter 1202, section 10] or organization of small businesses which has registered its name and address with the department of revenue shall receive by mail a copy or copies of any proposed rule which may have an impact on small business. Registration of the business's or organization's name and address with the department is accomplished by written notification to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. In the written notification, the business or organization must state that it wishes to receive copies of rules which may have an impact on small business, the number of copies of each rule it wishes to receive, and must also designate, by reference to rule 701—7.36(421,17A), the types of proposed rules it wishes to receive. If the small business or organization of small businesses wishes to receive copies of proposed rules not enumerated in rule 701—7.36(421,17A), it may make a blanket written request at the time of registration or at any time prior to the adoption of the rules. A charge of 20 cents per single-sided page shall be imposed to cover the actual cost of providing each copy of the proposed rule. In the event the actual cost exceeds 20 cents for a single-sided page, it will be billed accordingly.

The administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who qualify as a small business, or an organization representing at least 25 such persons may request issuance of a regulatory analysis by writing to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, Des Moines, Iowa 50319. The request shall contain the following information: the name of the persons qualified as a small business and the name of the small business or the name of the organization as stated in its request for registration and an address; if a registered organization is requesting the analysis, a statement that the registered organization represents at least 25 persons; the proposed rule or portion of the proposed rule for which a regulatory analysis is requested; the factual situation which gives rise to the business's or organization's difficulties with the proposed rule; any of the methods for reducing the impact of the proposed rule on small business contained in Iowa Code section 17A.4A [1998 Iowa Acts, chapter 1202, section 10] which may be particularly applicable to the circumstances; the name, address and telephone number of any person or persons knowledgeable regarding the difficulties which the proposed rule poses for small business and other information as the business or organization may deem relevant.

This rule is intended to implement Iowa Code section 17A.4A [1998 Iowa Acts, chapter 1202].

701—6.6(422) Retention of records and returns by the department. The director may destroy any records, returns, reports or communications of a taxpayer after they have been in the custody of the department for three years, or at such later time when the statute of limitations for audit of the returns or reports has expired. The director may destroy any records, returns, reports or communications of a

taxpayer before they have been in the custody of the department for three years provided that the amount of tax and penalty due has been finally determined.

This rule is intended to implement Iowa Code section 422.68.

701—6.7(68B) Consent to sell. In addition to being subject to any other restrictions in outside employment, self-employment or related activities imposed by law, an official of the department of revenue may only sell, either directly or indirectly, any goods or services to individuals, associations, or corporations subject to the authority of the department of revenue when granted permission subsequent to completion and approval of an Iowa department of revenue application to engage in outside employment. The application to engage in outside employment must be approved by the official's immediate supervisor, division administrator, and the administration division administrator. Approval to sell may only be granted when conditions listed in Iowa Code section 68B.4 are met.

This rule is intended to implement Iowa Code section 68B.4.

701—6.8(421) Tax return extension in disaster areas. If a natural disaster is declared by the governor in any area of the state, the director may extend for a period of up to one year the due date for the filing of any tax return and may suspend any associated penalty or interest that would accrue during that period of time for any affected taxpayer whose principal residence or business is located in the covered area if the director determines it necessary for the efficient administration of the tax laws of this state. The director will notify the public of any possible extensions of tax filings as well as possible suspensions of penalty and interest. Notification will be made through different means available to the director including, but not limited to, press releases, media information, and the department's Web site. Persons eligible for extension shall notify the director that they qualify and shall include a notation of the reason for the extension request on the tax return.

This rule is intended to implement 2008 Iowa Acts, Senate File 2400.

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CHAPTER 7
PRACTICE AND PROCEDURE BEFORE THE DEPARTMENT OF REVENUE

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

DIVISION I
INFORMAL, FORMAL, ADMINISTRATIVE AND JUDICIAL REVIEW PROCEDURES APPLICABLE TO CONTESTED CASES AND OTHER PROCEEDINGS COMMENCED PRIOR TO JULY 1, 1999

701—7.1(17A) Definitions. As used in the rules contained herein the following definitions apply, unless the context otherwise requires:

"Act" means the Iowa administrative procedure Act.

"Administrative law judge" means the person assigned to preside over a proceeding whether that be the director or an administrative law judge appointed according to Iowa Code chapter 17A.

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

"Contested case" means a proceeding, including licensing, in which the legal rights, duties or privileges of a party are required by constitution or statute to be determined by an agency after an opportunity for an evidentiary hearing.

"Department" means the Iowa department of revenue.

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

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

"Division of appeals and fair hearings" means the division of the department of inspections and appeals responsible for holding contested case proceedings which are authorized by Iowa Code chapter 10A.

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

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

"Motion" has the same meaning as the term is defined in Iowa R. Civ. P. 1.431.

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

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

"Petition" means application for declaratory ruling, initiation of rule-making proceedings or document filed in licensing.

"Pleadings" means protest, answer, reply or other similar document filed in a contested case proceeding.

"Presiding administrative law judge" means the administrative law judge who presides at the evidentiary hearing on the contested case.

"Proceeding" means licensing, rule making, declaratory rulings, contested cases, informal procedures.

"Protester" means any person entitled to file a protest which can culminate in a contested case proceeding.

"Review unit" means the unit composed of department employees designated by the director and the attorney general's staff who have been assigned by the director to review protests filed by taxpayers.

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

This rule is intended to implement Iowa Code sections 10A.202(1m), 17A.22 and 421.14.

701—7.2(17A) Scope of rules. The rules contained in this chapter pertaining to practice and procedure are designed to implement the requirements of the Act and aid in the effective and efficient administration and enforcement of the tax laws of this state. These rules shall govern the practice, procedure and conduct of informal proceedings, contested case proceedings, licensing, rule making, and declaratory rulings involving:

1. Sales tax—Iowa Code sections 422.42 to 422.59.
2. Use tax—chapter 423.
3. Individual and fiduciary income tax—sections 422.4 to 422.31 and 422.110 to 422.112.
4. Franchise tax—sections 422.60 to 422.66.
5. Corporate income tax—sections 422.32 to 422.41 and 422.110 to 422.112.
6. Withholding tax—sections 422.16 and 422.17.
7. Estimated tax—sections 422.16, 422.17 and 422.85 to 422.92.
8. Motor fuel tax—chapter 452A.
9. Property tax—chapters 421, 425, 426A, 427, 427A, 428, 428A and 433 to 441.
10. Cigarette and tobacco tax—chapters 421B and 453A.
11. Inheritance, generation skipping transfer and estate tax—chapters 450, 450A, 450B and 451.
12. Local option taxes—chapter 422B.
13. Hotel and motel tax—chapter 422A.
14. Drug excise tax—chapter 453B.
15. Automobile rental excise tax—chapter 422C.
16. Environmental protection charge—chapter 424.
17. Other taxes as may be assigned to the department from time to time.

As the design of these rules is to facilitate business and advance justice, any rule contained herein, unless otherwise provided by law, may be suspended or waived by the department to prevent undue hardship in any particular instance or to prevent surprise or injustice.

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

701—7.3(17A) Business hours. The principal office of the department in the Hoover State Office Building in Des Moines, Iowa, shall be open between the hours of 8 a.m. to 4:30 p.m. each weekday except Saturdays, Sundays and legal holidays as prescribed in Iowa Code section 4.1(34), for the purpose of receiving protests, pleadings, petitions, motions, requests for public information, copies of official documents, or for the opportunity to inspect public records.

All documents or papers required to be filed with the department by these rules shall be filed with the administrative law judge in the principal office of the department in the Hoover State Office Building, Des Moines, Iowa 50319. Requests for public information or copies of official documents or the opportunity to inspect public records shall be made in the director's office at the department's principal office.

701—7.4(17A) Computation of time, filing of documents. In computing any period of time prescribed or allowed by these rules or by an applicable statute, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday. Legal holidays are prescribed in Iowa Code section 4.1(34).

All documents or papers required to be filed with the department shall be considered as timely filed if they are either received by the department's principal office or are postmarked for delivery to the department's principal office within time limits as prescribed by law or by rules or orders of the department.

In all cases where the time for the filing of a protest or the performance of any other act shall be fixed by law, the time so fixed by law shall prevail over the time fixed in these rules.

701—7.5(17A) Form and style of papers. All pleadings, petitions, briefs and motions or other documents filed with the department shall be typewritten, shall have a proper caption, and a signature and copies as herein provided or as specified in some other rule.

7.5(1) Papers shall be typed on only one side of plain white paper. Pleadings, petitions, motions, orders and any other papers allowed or required to be filed by these rules may be on any size paper. Citations should be underscored.

7.5(2) The proper caption shall be placed in full upon the first paper filed.

7.5(3) The signature of the petitioner, party, or authorized representative shall be subscribed in writing to the original of all pleadings, petitions, briefs or motions and shall be an individual and not a firm name except that the signature of a corporation shall be the name of the corporation by one of its active officers. The name and mailing address of the party or the party's representative actually signing shall be typed or printed immediately beneath the written signature. The signature shall constitute a certification that the signer has read the document; that to the best of the signer's knowledge, information and belief every statement contained in the document is true and no such statement is misleading; and that it is not interposed for delay.

A taxpayer or the taxpayer's representative using E-mail or other electronic means to submit an income tax return, a sales tax or use tax return, a return for any other tax administered by the department, an application for a sales tax permit or other permit, a deposit form for remitting withholding tax or other taxes administered by the department, or any other document to the department may use an electronic signature or a signature designated by the department in lieu of a handwritten signature. To the extent that a taxpayer or the taxpayer's representative submits a tax return, deposit document, application or other document by E-mail or other electronic means to the department with an electronic signature or signature designated by the department, the taxpayer should include in the record of the document the taxpayer's federal identification number so that the taxpayer's identity is established. For purposes of this rule, "electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a tax return, deposit document, or other document filed with the department and executed or adopted by a person with the intent to sign the return, deposit document, or other document filed with the department. For purposes of this rule, "signature designated by the department" means a symbol or other information provided by the department to the taxpayer or the taxpayer's representative that is to serve instead of the handwritten signature of the taxpayer.

In a situation where the taxpayer or the taxpayer's representative has submitted a return or other document to the department by E-mail, the taxpayer should include the taxpayer's E-mail address in the record of the document. However, notwithstanding the above information, a taxpayer may not submit a tax return or other document to the department with an electronic signature when a handwritten signature is required with the return or document by federal or state law.

7.5(4) Every pleading (other than protest) or motion or brief shall bear proof of service upon the opposing party as provided by the Iowa Rules of Civil Procedure.

7.5(5) Except as otherwise provided in these rules or ordered by the department, an original copy only of every pleading, brief, motion or petition shall be filed.

7.5(6) All copies shall be clear and legible but may be on any weight paper.

Upon motion of an opposing party or on its own, the department may, in its discretion, if a person or party has failed to comply with this rule, require such person or party to follow the provisions of this rule pointing out the defects and details needed to comply with the rule prior to filing.

This rule is intended to implement Iowa Code chapters 17A and 554D and section 421.17.

701—7.6(17A) Persons authorized to practice before the department. Due to the complex questions involved and the technical aspects of taxation, persons are encouraged to seek the aid, advice, assistance and counsel of practicing attorneys and certified public accountants.

The right to practice before the department in connection with any proceeding shall be limited to the following classes of persons:

1. Taxpayers who are natural persons representing themselves.
2. Attorneys duly qualified and entitled to practice in the courts of the state of Iowa.

3. Attorneys who are entitled to practice before the highest court of record of any other state and who have complied with Iowa Ct.R. 31.14.

4. Accountants who are authorized, permitted, or licensed under Iowa Code chapter 542C.

5. Duly authorized directors or officers of corporations representing the corporation of which they are respectively a director or officer, excluding attorneys who are acting in the capacity of a director or officer of a corporation and who have not met the requirements of the third classification above.

6. Partners representing their partnership.

7. Fiduciaries.

8. Government officials authorized by law.

9. Enrolled agents, currently enrolled under 31 CFR §10.6 for practice before the Internal Revenue Service, representing a taxpayer in proceedings under division II, Iowa Code chapter 422.

Any person appearing in any proceeding before the department on behalf of another must have on file with the department a power of attorney.

No person who has served as an official or employee of the department shall within a period of two years after the termination of such service or employment appear before the department or receive compensation for any services rendered on behalf of any person, firm, corporation, or association in relation to any case, proceeding, or application with respect to which the person was directly concerned and in which the person personally participated during the period of service or employment.

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

701—7.7(17A) Resolution of tax liability. Unless a proper protest has been filed as provided hereinafter, persons interested in any tax liability, refund claim, licensing or any other tax matters shall discuss the resolution of such matters with appropriate personnel as designated by the billing.

In the event that a proper protest has been filed as provided hereinafter, the appropriate department personnel, when authorized by the review unit, shall have the authority to discuss the resolution of any matter in the protest either with the protester or the protester's representative. The appropriate personnel shall report their activities in this regard to the review unit and the unit shall be authorized to approve or reject any recommendations made by the appropriate personnel to resolve a protest.

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

701—7.8(17A) Protests. Any person wishing to contest an assessment, denial of refund claim, or any other department action, except licensing, which may culminate in a contested case proceeding shall file a protest, in writing, with the department within the time prescribed by the applicable statute or rule for filing notice of application to the director for a hearing. The protest must be either delivered to the department by United States Postal Service, by ordinary, certified, or registered mail, directed to the attention of the administrative law judge, personally delivered to the office of the administrative law judge, or be served on the department by personal service during business hours. For the purpose of mailing, a protest is considered filed on the date of the postmark. It is considered filed the date personal service or personal delivery to the office of the administrative law judge is made. See Iowa Code section 622.105 for the evidence necessary to establish proof of mailing. The period for appealing agency action relating to refund claims is the same statutory period for contesting an assessment. For assessments issued before January 1, 1995, the time period for filing a protest to an assessment cannot be extended by filing a refund claim. Failure to timely file a written protest will be construed as a waiver of opposition to the matter involved unless on the director's own motion, pursuant to statutory authority, the power of abatement is exercised. The review unit may seek dismissal of protests which are not in the proper form as provided by this rule. See subrule 7.11(2) for dismissals.

For refund claims filed on or after January 1, 1995, if the department has not granted or denied a refund claim within six months of filing the claim, the refund claimant may file a protest. Even though a protest is so filed, the department is entitled to examine and inspect the refund claimant's records to verify the refund claim.

Notwithstanding the above, the taxpayer who fails to timely protest an assessment issued on or after January 1, 1995, may contest the assessment by paying the whole assessed tax, interest, and penalty

and by filing a refund claim within the time period provided by law for filing such claim. However, in the event that such assessment involves divisible taxes, which are not timely protested, namely, an assessment which is divisible into a tax on each transaction or event, the taxpayer can contest the assessment by paying a portion of the assessment and filing a refund claim within the time period provided by law. In this latter instance, the portion paid must represent any undisputed portion of the assessment and must also represent the liability on a transaction or event for which, if the taxpayer is successful in contesting the portion paid, the unpaid portion of the assessment would be canceled. *Flora v. United States*, 362 U.S. 145, 4 L.Ed. 2d 623, 80 S.Ct. 630 (1960); *Higginbotham v. United States*, 556 F.2d 1173 (4th Cir. 1977); *Steele v. United States*, 280 F.2d 89 (8th Cir. 1960); *Stern v. United States*, 563 F. Supp. 484 (D.Nev. 1983); *Drake v. United States*, 355 F. Supp. 710 (E.D. Mo. 1973). Any such protest filed is limited to the issues covered by the amounts paid for which a refund was requested and denied by the department. Thereafter, if the department does not grant or deny the refund within six months of the filing of the refund claim or if the department denies the refund, the taxpayer may file a protest as authorized by this rule.

All of the taxes administered by the department can be divisible taxes, except individual income tax, fiduciary income tax, corporation income tax, and franchise tax. The following noninclusive examples illustrate the application of the divisible tax concept.

EXAMPLE A: X is assessed withholding income taxes, penalty and interest, as a responsible party on eight employees. X fails to timely protest the assessment. X contends that X is not a responsible party. If X is a responsible party, X was required to make monthly deposits of the withholding taxes. In this situation, the withholding taxes are divisible. Therefore, X can pay an amount of tax, penalty and interest attributable to one employee for one month and file a refund claim within the time period provided by law since if X is successful on the refund claim the remaining unpaid portion of the assessment would be canceled.

EXAMPLE B: Y is assessed sales tax, interest, and penalty for electricity purchased and used to power a piece of machinery in Y's manufacturing plant. Y fails to timely protest the assessment. Y was billed monthly for electricity by the power company to whom Y had given an exemption certificate. Y contends that the particular piece of machinery is used directly in processing tangible personal property for sale and that, therefore, all of the electricity is exempt from sales tax. In this situation, the sales tax is divisible. Therefore, Y can pay an amount of tax, penalty and interest attributable to one month's electrical usage in that machinery and file a refund claim within the time period provided by law since if Y is successful on the refund claim the remaining unpaid portion of the assessment would be canceled.

The protest shall be brought by and in the name of the interested or affected person or by and in the full descriptive name of the fiduciary legally entitled to institute a proceeding on behalf of the person or by an intervenor in contested case proceedings. In the event of a variance in the name set forth in the protest and the correct name, a statement of the reason for the discrepancy shall be set forth in the protest.

A protest which is filed shall contain:

7.8(1) A caption in the following form:

BEFORE THE IOWA STATE DEPARTMENT OF REVENUE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF _____	*	
(state taxpayer's name, address and	*	PROTEST
designate type of proceeding, e.g.,	*	DOCKET NO. _____
income tax refund claim)	*	(filled in by Department)

7.8(2) Substantially state in separate numbered paragraphs the following:

a. Proper allegations showing:

(1) Date of assessment.

(2) Date of refund denial.

(3) Whether, for assessments issued on or after January 1, 1995, protester failed to timely appeal the assessment and, if so, the date of payment and the date of filing the refund claim.

(4) Whether, for refund claims filed on or after January 1, 1995, the protest involves the appeal of a refund claim after six months from the date of filing the refund claim because the department failed to deny the claim.

(5) Attach a copy of the assessment, refund claim, and refund denial.

(6) Other items that the protester wishes to bring to the attention of the department.

b. The type of tax, the taxable period or periods involved and the amount in controversy;

c. List each error alleged to have been committed in a separate paragraph. For each error listed, provide an explanation of the error and all relevant facts related to the error;

d. Refer to any particular statute or statutes and any rule or rules involved, if known;

e. Description of records or documents which were not available or were not presented to department personnel prior to the filing of the protest, if any, and provide copies of any records or documents that were not previously presented to the department;

f. Any other matters deemed relevant and not covered in the above paragraphs;

g. The desire of protester to waive informal or contested case proceedings if it is desired; unless the protester so indicates a waiver, informal procedures will be initiated;

h. A statement setting forth the relief sought by protester;

i. The signature of the protester or that of the protester's representative, the addresses of the protester and of the protester's representative, and the telephone number of the protester or the protester's representative.

j. Attach a copy of power of attorney for protester's representative.

Upon receipt of the protest, the administrative law judge shall docket the protest in a docket kept for that purpose and shall assign a number to the case which number shall be placed on all subsequent pleadings filed in the case. An original and two copies of the protest shall be filed.

The protester may amend the protest at any time prior to the commencement of the evidentiary hearing. The department can request that protester amend the protest for purposes of clarification.

7.8(3) Denial of renewal of vehicle registration or denial of issuance or renewal, or suspension of driver's license. A person who has had an application for renewal of vehicle registration denied or has been denied the issuance of a driver's license or the renewal of a driver's license, or has had a driver's license suspended may file a protest with the department if the denial of the issuance or renewal or the suspension is because the person owes delinquent taxes.

The issues raised in a protest by the person, which are limited to a mistake of fact, may include but are not limited to:

1. The person has the same name as the obligor but is not the correct person.
2. The amount in question has been paid.
3. The person has made arrangements with the department to pay the amount.

701—7.9(17A) Identifying details. Any person may, at any time, petition the administrative law judge to delete identifying details concerning the person from any document relating to any proceedings as defined in rule 7.1(17A), prior to disclosure to members of the public.

If the petition concerns information which is not a part of a contested case, the petition shall be in the form of a request to delete identifying details; if part of a contested case, the petition shall be in the form of a motion to delete identifying details. All motions to delete shall conform to subrule 7.17(3).

The motion or request shall contain the following:

1. The name of the person requesting deletion and the docket number of the proceeding, if applicable.

2. The legal basis for their request for deletion; such as, release of the material would be a clearly unwarranted invasion of personal privacy or the material is a trade secret or of advantage to competitors. A corporation may not claim an unwarranted invasion of privacy.

3. A precise description of the document, report or other material in the possession of the department from which the deletion is sought, and a precise description of the information to be deleted. If deletion is sought from more than one document, each document and the materials sought to be deleted from it shall be listed in separate paragraphs. Also contained in each separate paragraph shall be a statement of the legal basis for the deletion requested in that paragraph, such as, the material sought to be deleted is a trade secret or its release would give advantage to competitors and serve no public purpose.

4. An affidavit in support of deletion must accompany each motion or request. The affidavit must be sworn to by a person familiar with the facts asserted within it and shall contain a clear and concise explanation of the facts justifying deletion, not merely the legal basis for deletion.

5. All affidavits shall contain a general statement that the information sought to be deleted is not available to the public from any source or combination of sources, direct or indirect, and if the grounds for deletion is that the release of information would give advantage to competitors, the general statement that the release would serve no public purpose.

A ruling on a request or motion shall not become the final decision of the department until 30 days after the date of the ruling unless there is an appeal to, or review on motion of, the director within 30 days of the date of the ruling.

701—7.10(17A) Docket. The administrative law judge shall maintain a docket of all proceedings and each of the proceedings shall be assigned a number. Every matter coming within the purview of these rules shall be assigned a docket number which shall be the official number for the purposes of identification. Upon receipt of a protest, petition for declaratory ruling or petition to initiate rule-making proceedings, the proceeding will be docketed and assigned a number, and the parties notified thereof. The number shall be placed by the parties on all papers thereafter filed in the proceeding.

701—7.11(17A) Informal procedures and dismissals of protests.

7.11(1) *Informal procedures.* Persons are encouraged to utilize the informal procedure provided herein so that a settlement may be reached between the parties without the necessity of initiating contested case proceedings. Therefore, unless the protester indicates a desire to waive the informal procedures in the protest or the department waives informal procedures upon notification to the protester, such informal procedures will be initiated as herein provided upon the filing of a proper protest.

a. *Review unit.* A review unit is created within the department and, subject to the control of the director, the unit will:

(1) Review and evaluate the validity of all protests made by taxpayers from the agency action.

(2) Determine the correct amount of tax owing or refund due.

(3) Determine the best method of resolving the dispute between the protester and the department.

(4) Assign protests to the appropriate divisions or sections of the department for resolution.

(5) Take further action regarding the protest, including any additions and deletions to the audit, as may be warranted by the circumstances to resolve the protest, including a request for an informal conference.

(6) Determine whether the protest complies with rule 7.8(17A) and request any amendments to the protest or additional information.

After assignment of the protest, the section or division responsible may concede any items contained in the protest which it determines should not be controverted by the department. If the protester has not waived informal procedures, the section or division responsible may request the protester and the protester's representative, if any, to attend an informal conference with the responsible section or division to explore the possibility of reaching a settlement without the necessity of initiating contested case proceedings or of narrowing the issues presented in the protest if no settlement can be made.

If informal procedures have been waived, findings dealing with the issues raised in the protest may be issued unless the issues may be more expeditiously determined in another manner or it is determined that findings are unnecessary. The protester will be notified of the decision on the issues in controversy.

Nothing herein will prevent the section or division responsible and the protester from mutually agreeing on the manner in which the protest will be informally reviewed.

b. *Settlements.* If a settlement is reached during informal procedures, the administrative law judge shall be notified. The administrative law judge shall issue an order and serve it upon all parties which order shall set forth that a settlement was reached and shall terminate the case.

7.11(2) *Dismissal of protests.*

a. Whether informal procedures have been waived or not, the failure of the protester to timely file a protest or to pursue the protest may be grounds for dismissal of the protest by the administrative law judge. If informal procedures have not been waived, the failure of the protester to present evidence or information requested by the review unit shall constitute grounds for the administrative law judge to dismiss the protest. For purposes of this subrule, an evasive or incomplete response will be treated as a failure to present evidence or information. The failure of protester to file a protest in the format required by rule 7.8(17A) may be grounds for dismissal of the protest by the administrative law judge.

b. If the department seeks to have the protest dismissed, the review unit shall file a motion to dismiss with the office of the administrative law judge and serve a copy of the motion on protester. Protester may file a resistance to the motion within 20 days of the date of service of the motion. If no resistance is so filed, the administrative law judge shall immediately enter an order dismissing the protest. If a resistance is filed, the review unit has 10 days from the date of the filing of the resistance to decide whether to withdraw its motion and so notify the administrative law judge and protester. If no such notice is issued by the review unit within the 10-day period, the administrative law judge shall issue a notice for a contested case proceeding on the motion as prescribed by rule 7.14(17A) except that the issue of the contested case proceeding shall be limited to the question of whether the protest shall be dismissed. Thereafter, the rules of the department pertaining to contested case proceedings shall apply in such dismissal proceedings.

c. If a motion to dismiss is filed and is unresisted, a protest so dismissed may be reinstated by the administrative law judge for good cause shown if an application for reinstatement is filed with the office of the administrative law judge within 30 days of the date the protest was dismissed. The application shall set forth all reasons and facts upon which the protester relies in seeking reinstatement of the protest. The review unit shall review the application and notify the protester whether the application is granted or denied. If the review unit denies the application to reinstate the protest, the protester has 30 days from the date the application for reinstatement was denied in which to request, in writing, a formal hearing before the administrative law judge on the reinstatement. When a written request is received, the administrative law judge shall issue a notice as prescribed in rule 7.14(17A) except that the issue of the contested case proceeding shall be limited to the question of whether the protest shall be reinstated. Thereafter, the rules of the department pertaining to contested case proceedings shall apply in such reinstatement proceedings.

d. Once contested case proceedings have been commenced, whether informal proceedings have been waived or not, it shall be grounds for a motion to dismiss that a protester has either failed to diligently pursue the protest or refuses to comply with requests for discovery set forth in rule 7.15(17A).

701—7.12(17A) Answer. The department may, in lieu of findings, file an answer. When findings are issued, the department will file an answer within 30 days of receipt of written notification from protester stating disagreement with the findings. The answer shall be filed with the department's administrative law judge.

In the event that the protester does not so respond in writing to the findings issued on matters covered by subrule 7.11(1) within 30 days after being notified, the department may seek dismissal of the protest pursuant to subrule 7.11(2).

The answer of the department shall be drawn in a manner as provided by the Iowa rules of civil procedure for answers filed in Iowa district courts.

Each paragraph contained in the answer shall be numbered to correspond, where possible, with the paragraphs of the protest. An original copy only of the answer shall be filed with the administrative law judge and shall be signed by the department's counsel or representative.

The department shall forthwith serve a copy of the answer upon the representative of record, or if there is no representative of record then upon the protester, and shall file proof of service with the administrative law judge at the time of filing of the answer. The department may amend its answer at any time prior to the commencement of the evidentiary hearing.

The provisions of rule 7.12(17A) shall be considered as a part of the informal procedures since a contested case proceeding, at the time of filing the answer, has not yet commenced. However, an answer shall be filed pursuant to this rule whether or not informal procedures have been waived by the protester or the department.

Notwithstanding the above portions of this rule, if a taxpayer, who has filed a protest on or after January 1, 1995, makes a written demand for a contested case proceeding, as authorized by subrule 7.14(2), after a period of six months from the filing of a proper protest, the department shall file its answer within 30 days after receipt of the demand. If the department fails to file its answer within this 30-day period, interest shall be suspended, if the protest involves an assessment, from the time that the department was required to answer until the date that the department files its answer and, if the protest involves a refund, interest shall accrue on the refund at double the rate from the time the department was required to answer until the date that the department files its answer.

This rule is intended to implement Iowa Code sections 10A.202(1)*"m,"* 17A.22, 421.14 and 421.60.

701—7.13(17A) Subpoenas. Prior to the commencement of a contested case, the department shall have the authority to subpoena books, papers, records and shall have all other subpoena powers conferred upon it by law. Subpoenas in this case shall be issued by the department's administrative law judge.

This rule is intended to implement Iowa Code sections 10A.202(1)*"m,"* 17A.22 and 421.14.

701—7.14(17A) Commencement of contested case proceedings.

7.14(1) Payment of tax or bond required prior to contested case proceedings for assessments made prior to January 1, 1991.

a. Effective date—payment or bond required. Effective for contested case proceedings for unpaid tax, penalty, interest, or fees commenced in response to assessments made on or after January 1, 1987, and prior to January 1, 1991, the taxpayer must pay prior to the commencement of contested case proceedings, all of the assessed tax, penalty, interest, or fees or, upon a showing of good cause, a bond may be posted in lieu of payment of the amount of the assessment that is in dispute.

b. Cases applicable. The provisions of this subrule only apply to those contested case proceedings where a tax, penalty, interest, or fees, or any combination of them, which has not been previously paid prior to the commencement of contested case proceedings, is at issue.

c. Cases not applicable. This subrule does not apply to protest proceedings involving only the denial of refund claims. Nor does this subrule apply to a taxpayer's appeal or protest pending in informal procedures involving an unpaid tax, penalty, interest, or fees.

d. Time disputed tax, penalty, interest, or fees must be paid. Unless a bond has been posted as provided in subrule 7.14(1), paragraph *"f,"* all of the disputed tax, penalty, interest, or fees assessed computed to the date of payment must be paid in full, within 30 days after the date the answer is filed by the department. Undisputed amounts are not eligible for a bond and must be paid with the payment of the disputed amount, or with the posting of the bond.

e. Payment deemed made under protest. Unless the taxpayer declares otherwise in writing, the payment of that portion of the assessed tax, penalty, interest, or fees in dispute after the filing of the department's answer, shall be deemed to have been paid under protest and, if upon resolution of the protest, the amount paid is in excess of the correct tax, penalty, interest, or fees due, the excess shall be refunded to the taxpayer or other persons entitled with interest as provided by law, subject to any right of offset.

f. *Bond in lieu of payment.* Within 30 days after the date the answer is filed by the department, and upon filing an application showing good cause, the taxpayer may, in lieu of payment, post a bond securing the payment of that portion of the assessed tax, penalty, interest, or fees which is in dispute accrued to the date the bond is posted. A taxpayer is not permitted to refuse to pay the portion of the assessed amount not in dispute until all disputed issues have been resolved. The uncontested portion of the assessment must be paid and a bond is only permitted to be posted in lieu of payment of the amount in dispute. The bond shall be payable to the department for the use of the state of Iowa and shall be conditioned upon the full payment of the tax, penalty, interest, or fees that are found to be due which remain unpaid upon the resolution of the contested case proceedings. The bond shall be for the full amount of the assessed tax, penalty, interest, or fees that is in dispute, computed to the day the bond is posted. Provided upon application of the taxpayer or the department, the department's administrative law judge may, upon hearing, fix a greater or lesser amount to reflect changed circumstances, but only after ten days' prior notice is given to the department or the taxpayer as the case may be.

g. *Type of bond.* A personal bond, without a surety, is only permitted if the taxpayer posts with the department's administrative law judge, cash, a cashier's check, a certificate of deposit, or other marketable securities with a readily ascertainable value which is equal in value to the total amount of the bond required. If a surety bond is posted, the surety on the bond may be either personal or corporate. The provisions of this subrule and Iowa Code chapter 636 relating to personal and corporate sureties shall govern.

h. *Procedure for posting bond.* In the event the taxpayer desires to post bond in lieu of payment of the amount of the tax, penalty, interest, or fees claimed to be due which is in dispute, an application in writing, together with the bond must be filed with the administrative law judge within 30 days after the department's answer is filed. The application must state the reasons why good cause exists for posting a bond in lieu of payment. A copy of the application with a copy of the bond attached must be given the department's representative by ordinary mail and thereafter if the taxpayer and the department agree on the bond, it shall be approved by the administrative law judge. If an agreement on the bond is not reached and the department has not filed with the administrative law judge written objections to granting the bond within ten days after the postmark date of the notice of application, the administrative law judge shall approve the bond, if the bond is otherwise in proper form and in compliance with the law. In the event objections are filed by the department, the administrative law judge shall set the objections down for hearing with written notice to be given the taxpayer and the department at least ten days prior to the hearing. If upon hearing the department's objections are overruled, the bond shall be approved. If the objections are sustained, and the taxpayer fails to pay the amount of the tax, penalty, interest, or fees claimed to be due or cure the bond defects, if permitted by the administrative law judge's order, within 30 days after the administrative law judge's decision, the protest shall be dismissed and the dismissal shall be with prejudice, if the time for protesting the department action has elapsed.

i. *Reasons constituting good cause.* The financial hardship of the taxpayer as evidenced by the books and records of the taxpayer is an example of a good cause for posting a bond in lieu of paying the tax, penalty, interest, or fees in dispute. In addition, posting of a bond will be allowed upon agreement of the protester and the department.

j. *Form of surety bond.* The surety bond posted shall be in substantially the following form:

BEFORE THE IOWA STATE DEPARTMENT OF REVENUE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF	*	
		SURETY BOND
(Taxpayer's Name,	*	
Address and designate	*	

proceeding, e.g., income,	*	
sales, etc.)	*	
	*	DOCKET NO.

KNOW ALL PERSONS BY THESE PRESENTS:

That we ____(taxpayer)____ as principal, and ____(surety)_____, as surety, of the county of _____ , and State of Iowa, are held and firmly bound unto the Iowa Department of Revenue for the use of the State of Iowa, in the sum of $ _____ dollars, lawful money of the United States, for the payment of which sum we jointly and severally bind ourselves, our heirs, devisees, successors and assigns firmly by these presents. The condition of the foregoing obligations are, that, whereas the above named principal has protested an assessment of tax, penalty, interest, or fees or any combination of them, made by the Iowa Department of Revenue, now if the principal _____ shall promptly pay the amount of the assessed tax, penalty, interest, or fees found to be due upon the resolution of the contested case proceedings, then this bond shall be void, otherwise to remain in full force and effect.

Dated the _____ day of _____ , 20 ____ .

_____
Principal

_____
Surety

_____
Surety

(corporate acknowledgment if surety is a corporation)

AFFIDAVIT OF PERSONAL SURETY

STATE OF IOWA
ss.
COUNTY OF)

I hereby swear or affirm that I am a resident of Iowa and am worth beyond my debts the amount set opposite my signature below in the column entitled, "Worth Beyond Debts", and that I have property in the State of Iowa, liable to execution equal to the amount set opposite my signature in the column entitled "Property in Iowa Liable to Execution".

Signature	Worth Beyond Debts	Property in Iowa Liable to Execution
_____	$ _____	$ _____
Surety (type name)		
_____	$ _____	$ _____
Surety (type name)		

Subscribed and sworn to before me the undersigned Notary Public this _____ day of _____, 20 ____.

(Seal)

_____
Notary Public in and
for the State of Iowa

k. Duration of bond. The bond shall remain in full force and effect until the conditions of the bond have been fulfilled or until the bond is otherwise exonerated by the administrative law judge.

l. Exoneration of the bond. Upon conclusion of the contested case administrative proceedings, the bond shall be exonerated by the administrative law judge when any of the following events occur: upon full payment of the tax, penalty, interest, or fees found to be due; upon filing a bond for the purposes of judicial review; or if no additional tax, penalty, interest, or fees are found to be due that have not been previously paid, upon entry of the order resolving the contested case proceedings.

m. Failure to pay amount found to be due. If upon resolution of the contested case proceedings, the taxpayer fails to pay the tax, penalty, interest, or fees assessed or found to be due, the bond shall be forfeited by the administrative law judge and the department may sell or liquidate any property posted by the taxpayer, or bring suit against the surety on the bond and apply the amount recovered to the tax, penalty, interest, or fees due. Any excess over the amount due shall be refunded to the taxpayer or other persons entitled as provided by law, subject to any right of offset.

n. Dismissal of protest—failure to pay or post bond. The administrative law judge must dismiss the protest in the following circumstances:

(1) If the taxpayer fails to pay the amount of the assessed tax, penalty, interest, or fees or fails to post a bond with the administrative law judge for the amount of the assessment in dispute within 30 days after the filing of the department's answer;

(2) The taxpayer fails to pay the disputed tax, penalty, interest, or fees or fails to file an acceptable bond, if permitted by order of the administrative law judge, within 30 days after the order sustaining the department's objection to the bond. The dismissal shall be with prejudice if the time for protesting the department's action has elapsed at the time of dismissal. The dismissal of the protest cannot be avoided or circumvented when payment has not been made or a bond posted by a withdrawal of or amendment to the protest after the answer has been filed.

7.14(2) Demand or request for contested case proceedings. A demand or request by the protester for the commencement of contested case proceedings must be in writing and either be mailed to the department by United States Postal Service ordinary, certified, or registered mail directed to the attention of the administrative law judge, or be served on the department by personal service or by personal delivery of the demand or request to the office of the administrative law judge during business hours. The demand or request is considered filed on the date of the postmark or the date personal service is made. See Iowa Code section 622.105 for the evidence necessary to establish proof of mailing.

Contested case proceedings will be commenced by the department's administrative law judge by delivery of notice by ordinary mail directed to the parties, after a demand or request is made (1) by the protester and the filing of the answer, if one is required, which demand or request may include a date to be set for the hearing, or (2) upon filing of the answer, if a request or demand for contested case proceedings has not been made by the protester. The notice will be given by the department's administrative law judge. Both the department's administrative law judge and the presiding administrative law judge may grant a continuance of the hearing. Any change in the date of the hearing shall be set by the presiding administrative law judge. Either party may apply to the presiding administrative law judge for a specific date for the hearing. The notice shall include:

1. A statement of the time (which shall allow for a reasonable time to conduct discovery), place and nature of the hearing;
2. A statement of the legal authority and jurisdiction under which the hearing is held;
3. A reference to the particular sections of the statutes and rules involved;
4. A short and plain statement of the matters asserted, including the issues.

After the delivery of the notice commencing the contested case proceedings, the parties may file further pleadings or amendments to pleadings as they desire. However, any pleading or amendment thereto which is filed within seven days prior to the date scheduled for the hearing or filed on the date of the hearing shall constitute good cause for the party adversely affected by the pleading or amendment to seek and obtain a continuance.

This rule is intended to implement Iowa Code sections 10A.202(1*m*), 17A.12 and 421.8A.

701—7.15(17A) Discovery. The rules of the Supreme Court of the state of Iowa, as amended, applicable in civil proceedings with respect to depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission shall apply to discovery procedures in contested case proceedings. Disputes concerning discovery shall be resolved by the department's administrative law judge. If necessary a hearing shall be scheduled, with reasonable notice to the parties and upon hearing an appropriate order shall be issued by the department's administrative law judge.

When the department relies on a witness in a contested case, whether or not a departmental employee, who has made prior statements or reports with respect to the subject matter of the witness' testimony, it shall, on request, make such statements or reports available to a party for use on cross-examination, unless those statements or reports are otherwise expressly exempt from disclosure by constitution or statute. Identifiable departmental records that are relevant to disputed material facts involved in a contested case, shall, upon request, promptly be made available to the party unless the requested records are expressly exempt from disclosure by constitution or statute.

Evidence obtained in such discovery may be used in contested case proceedings if that evidence would otherwise be admissible in the contested case proceeding.

This rule is intended to implement Iowa Code sections 10A.202(1*m*), 17A.22 and 421.14.

701—7.16(17A) Prehearing conference. The administrative law judge, upon motion, or upon the written request of a party, shall direct the parties to appear at a specified time and place before the administrative law judge for a prehearing conference to consider:

1. The possibility or desirability of waiving any provisions of the Act relating to contested case proceedings by written stipulation representing an informed mutual consent.
2. The necessity or desirability of setting a new date for hearing.
3. The simplification of issues.
4. The necessity or desirability of amending the pleadings either for the purpose of clarification, amplification or limitation.
5. The possibility of agreeing to the admission of facts, documents or records not really controverted, to avoid unnecessary introduction of proof.
6. The procedure at the hearing.
7. Limiting the number of witnesses.
8. The names and identification of witnesses and the facts each party will attempt to prove at the hearing.
9. Conduct or schedule of discovery.
10. Such other matters as may aid, expedite or simplify in the disposition of the proceeding.

Since stipulations are encouraged it is expected and anticipated that the parties proceeding to a hearing will stipulate to evidence to the fullest extent to which complete or qualified agreement can be reached including all material facts that are not or should not fairly be in dispute.

Any action taken at the prehearing conference shall be recorded in an appropriate order, unless the parties enter upon a written stipulation as to such matters or agree to a statement thereof made on the record by the administrative law judge.

When an order is issued at the termination of the prehearing conference, a reasonable time shall be allowed to the parties to present objections on the ground that it does not fully or correctly embody the agreements at such conference. Thereafter, the terms of the order or modification thereof shall determine the subsequent course of the proceedings relative to matters it includes, unless modified to prevent manifest injustice.

Without the necessity of proceeding to an evidentiary hearing in a contested case, the parties may agree in writing to informally dispose of the case by stipulation, agreed settlement, consent order or by another method agreed upon. If such informal disposition is utilized, the parties shall so indicate to the administrative law judge that the case has been settled.

If either party to the contested case proceeding fails to appear at the prehearing conference, or fails to request a continuance, or fails to submit evidence or arguments which the party wishes to be considered in lieu of appearance, the opposing party may move for dismissal. The motion shall be made in accordance with subrule 7.17(3).

This rule is intended to implement Iowa Code section 17A.12.

701—7.17(17A) Contested case proceedings. Unless the parties to a contested case proceeding have, by written stipulation representing an informed mutual consent, waived the provisions of the Act relating to such proceedings, contested case proceedings shall be initiated and culminate in an evidentiary hearing open to the public. Evidentiary hearings shall be held at the department's principal office, Hoover State Office Building, Des Moines, Iowa 50319, except that a case may be assigned for hearing elsewhere only for extraordinary circumstances or when the protester would otherwise be deprived of due process of law. By agreement of the parties, the hearing may be conducted at another place or by other means, for example, through the fiber optic network or by telephone. Parties shall be notified at least 30 days in advance of the date and place of the hearing.

7.17(1) *Conduct of proceedings.* A proceeding shall be conducted by an administrative law judge who, among other things, shall:

a. Open the record and receive appearances;
b. Administer oaths, and issue subpoenas;
c. Enter the notice of hearing into the record;
d. Receive testimony and exhibits presented by the parties;
e. In the administrative law judge's discretion, interrogate witnesses;
f. Rule on objections and motions;
g. Close the hearing;
h. Issue an order containing findings of fact and conclusions of law.

Evidentiary proceedings shall be oral and open to the public and shall be recorded either by mechanical means or by certified shorthand reporters. Parties requesting that the hearing be recorded by certified shorthand reporters shall bear the appropriate costs. The record of the oral proceedings or the transcription thereof shall be filed with and maintained by the department for at least five years from the date of the decision.

An opportunity shall be afforded to the parties to respond and present evidence and argument on all issues involved and to be represented by counsel at their own expense. Unless otherwise directed by the administrative law judge, evidence will be received in the following order:

(1) Protester (2) intervenor (if applicable) (3) department (4) rebuttal by protester (5) oral argument by parties (if necessary).

If the protester or the department appear without counsel or other representative who can reasonably be expected to be familiar with these rules, the administrative law judge shall explain to the parties the rules of practice and procedure and generally conduct a hearing in a less formal manner than that used when the parties have such representatives appearing upon their behalf. It should be the purpose of the administrative law judge to assist any party appearing without such representative to the extent necessary to allow the party to fairly present evidence, testimony and arguments on the issues. The administrative law judge shall take whatever steps may be necessary and proper to ensure that all evidence having probative value is presented and that each party is accorded a fair hearing.

If the parties have mutually agreed to waive the provisions of the Act in regard to contested case proceedings, the hearing will be conducted in a less formal manner than when an evidentiary hearing is conducted.

If a party fails to appear in a contested case proceeding after proper service of notice, the administrative law judge may, upon the judge's own motion or upon the motion of the party who has appeared, adjourn the hearing or proceed with the hearing and make a decision in the absence of the party.

Contemptuous conduct by any person appearing at a hearing shall be grounds for the person's exclusion from the hearing by the administrative law judge.

A stipulation by the parties of the issues or a statement of the issues in the notice commencing the contested case cannot be changed by the presiding administrative law judge without the consent of the parties. The presiding law judge shall not on their own motion change or modify the issues agreed upon by the parties. Notwithstanding the provisions of this paragraph, a party within a reasonable time prior to the hearing may request that a new issue be addressed in the proceedings, except that the request cannot be made after the parties have stipulated to the issues.

The department's administrative law judge may forward the appeal file to the division of appeals and fair hearings of the department of inspections and appeals for the purpose of scheduling and conducting a hearing on the protest. Before doing so the department's administrative law judge shall secure the consent of the division of appeals and fair hearings. The parties shall be notified whether or not the division of appeals and fair hearings will schedule and conduct the hearing.

7.17(2) *Rules of evidence.* In evaluating evidence, the department's experience, technical competence, and specialized knowledge may be utilized.

a. *Oath.* All testimony presented before the administrative law judge shall be given under oath which the administrative law judge has authority to administer.

b. *Production of evidence and testimony.* The administrative law judge may issue subpoenas to a party on request, as permitted by law, compelling the attendance of witnesses and the production of books, papers, records or other real evidence.

(1) *Subpoena.* When a subpoena is desired after the commencement of a contested case proceeding, the proper party shall indicate to the department's administrative law judge the name of the case, the docket number and the last-known addresses of the witnesses to be called. If evidence other than oral testimony is required, each item to be produced must be adequately described. When properly prepared by the department's administrative law judge, the subpoena will be returned to the requesting party for service. Service may be made in any manner allowed by law before the hearing date of the case which the witness is required to attend. No costs for serving a subpoena will be allowed if it is served by any person other than the sheriff. Subpoenas requested for discovery purposes shall be issued by the department's administrative law judge.

(2) Reserved.

c. *Admissibility of evidence.*

(1) *Evidence having probative value.* Although the administrative law judge is not bound to follow the technical common law rules of evidence, a finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial. Therefore, the administrative law judge may admit and give probative effect to evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The administrative law judge shall give effect to the rules of privilege recognized by law. Evidence not provided to a requesting party through discovery shall not be admissible at the hearing. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be required to be submitted in verified written form by the administrative law judge.

Objections to evidentiary offers may be made at the hearing and the administrative law judge's ruling thereon shall be noted in the record.

(2) *Evidence of a federal determination.* Evidence of a federal determination whether it be a treasury department ruling or regulation or determination letter, a federal court decision or an internal revenue service assessment relating to issues raised in the proceeding shall be admissible, and the protester shall be presumed to have conceded the accuracy of it unless the protester specifically states wherein it is erroneous.

(3) *Copies of evidence.* A copy of any book, record, paper or document may be offered directly in evidence in lieu of the original, if the original is not readily available or if there is no objection. Upon request, the parties shall be given an opportunity to compare the copy with the original, if available.

(4) *Stipulations.* Approval of the presiding administrative law judge is not required for stipulations of the parties to be used in contested case proceedings. In the event the parties file a stipulation in the proceedings, the stipulation shall be binding on the parties and the presiding administrative law judge.

d. Exhibits.

(1) *Identification of exhibits.* Exhibits attached to a stipulation or entered in evidence which are offered by protesters shall be numbered serially, i.e., 1, 2, 3, etc.; whereas, those offered by the department shall be lettered serially, i.e., A, B, C, etc.; and those offered jointly shall be numbered and lettered, i.e., 1-A, 2-B, 3-C, etc.

(2) *Disposition of exhibits.* After an order has become final, either party desiring the return, at the party's expense, of any exhibit belonging to the party shall make application in writing to the administrative law judge within 30 days suggesting a practical manner of delivery; otherwise, exhibits may be disposed of as the administrative law judge deems advisable.

e. Official notice. The administrative law judge may take official notice of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the department. Parties shall be notified at the earliest practicable time, either before or during the hearing, or by reference in preliminary reports, preliminary decisions or otherwise, of the facts proposed to be noticed and their source, including any staff memoranda or data. The parties shall be afforded an opportunity to contest such facts prior to the issuance of the decision in the contested case proceeding unless the administrative law judge determines as a part of the record or decision that fairness to the parties does not require an opportunity to contest such facts.

f. Evidence outside the record. Except as provided by these rules, the administrative law judge shall not consider factual information or evidence in the determination of any proceeding unless the same shall have been offered and made a part of the record in the proceeding.

g. Presentation of evidence and testimony. In any hearing each party thereto shall have the right to present evidence and testimony of witnesses and to cross-examine any witness who testifies on behalf of an adverse party. Persons whose testimony has been submitted in written form, if available, shall also be subject to cross-examination by an adverse party. Opportunity shall be afforded each party for redirect examination and recross examination and to present evidence and testimony as rebuttal to evidence presented by another party, except that unduly repetitious evidence shall be excluded.

h. Offer of proof. An offer of proof may be made through the witness or by statement of counsel. The party objecting may cross-examine the witness without waiving any objection.

7.17(3) *Motions.* After commencement of contested case proceedings, appropriate motions may be filed by any party with the administrative law judge when facts requiring such motion come to the knowledge of the party. All motions shall state the relief sought and the grounds upon which the same are based.

Motions made prior to a hearing shall be in writing and a copy thereof served on all parties and attorneys of record. Such motions shall be ruled on by the administrative law judge. The administrative law judge shall rule on the motion by issuing an order. A copy of the order containing the ruling on the motion shall be mailed to the parties and authorized representatives. Motions may be made orally during the course of a hearing; however, the administrative law judge may request that it be reduced to writing and filed with the administrative law judge.

To avoid a hearing on a motion, it is advisable to secure the consent of the opposite party prior to filing the motion. If consent of the opposite party to the motion is not obtained, a hearing on the motion may be scheduled and the parties notified. The burden will be on the party filing the motion to show good cause why the motion should be granted.

The party making the motion may annex thereto such affidavits as are deemed essential to the disposition of the motion, which shall be served with the motion and to which the opposite party may reply with counter affidavits.

a. Types of motions. Types of motions include but are not limited to:

(1) Motion for continuance.

(2) Motion for dismissal.

(3) Motion for summary judgment.

(4) Motion to delete identifying details in the decision.

b. Hearing on motions. Motions relating to proceedings prior to hearing in contested case proceedings shall be heard by the department's administrative law judge. Motions relating to the contested case hearing shall be heard by the presiding administrative law judge.

c. Summary judgment procedure. Summary judgment may be obtained under the following conditions and circumstances:

(1) A party may, after a reasonable time to complete discovery, after completion of discovery, or by agreement of the parties, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part of a party's claim or defense.

(2) The motion shall be filed not less than 45 days prior to the date the case is set for hearing, unless otherwise ordered by the administrative law judge. Any party resisting the motion shall file within 30 days from the time of service of the motion a resistance; statement of disputed facts, if any; and memorandum of authorities supporting the resistance. If affidavits supporting the resistance are filed, they must be filed with the resistance. The time fixed for hearing or normal submission on the motion shall be not less than 35 days after the filing of the motion, unless another time is ordered by the administrative law judge. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

(3) Upon any motion for summary judgment pursuant to this rule, there shall be annexed to the motion a separate, short, and concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried, including specific reference to those parts of the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits which support such contentions and a memorandum of authorities.

(4) Supporting and opposing affidavits shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. The administrative law judge may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, further affidavits, or oral testimony. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party's pleading, but the party's response must set forth specific facts, by affidavits or as otherwise provided in this rule, showing that there is a genuine issue for hearing. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party.

(5) If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a hearing is necessary, the administrative law judge at the hearing of the motion, by examining the pleadings and the evidence before the administrative law judge and by interrogating counsel, shall, if practicable, ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. The administrative law judge shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the hearing of the contested case the facts so specified shall be deemed established, and the hearing shall be conducted accordingly.

(6) Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present, by affidavit, facts essential to justify the party's opposition, the administrative law judge may refuse the application for judgment, or may order a continuance to permit affidavits to be obtained, or depositions to be taken or discovery to be completed, or may make other order.

(7) An order on summary judgment that disposes of less than the entire case is appealable to the director at the same time that the proposed order is appealable pursuant to subrule 7.17(5).

7.17(4) *Briefs and oral argument.* At any time, upon the request of any party or in the administrative law judge's discretion, the administrative law judge may require the filing of briefs on any of the issues before the administrative law judge prior to or at the time of hearing or at a subsequent time. At the hearing, the parties should be prepared to make oral arguments as to the facts and law at the conclusion of the hearing if the administrative law judge so directs.

An original copy only of all briefs shall be filed. Filed briefs shall conform to the requirements of 7.5(17A).

If the parties agree on a schedule for submission of briefs, the schedule shall be binding on the parties and the presiding administrative law judge except that, for good cause shown, the time may be extended upon application of a party.

7.17(5) *Orders.* At the conclusion of the hearing, the administrative law judge, in the administrative law judge's discretion, may request the parties to submit proposed findings of fact and conclusions of law. Upon the request of any party, the administrative law judge shall allow the parties an opportunity to submit proposed findings of fact and conclusions of law.

The decision in a contested case is an order which shall be in writing or stated in the record. The order shall include findings of fact prepared by the person presiding at the hearing, unless the person is unavailable, and based solely on the evidence in the record and on matters officially noticed in the record, and shall include conclusions of law. The findings of fact and conclusions of law shall be separately stated. If a party has submitted proposed findings of fact, the order shall include a ruling upon each proposed finding. Each conclusion of law shall be supported by cited authority or by a reasoned opinion. If the issue of reasonable litigation costs was held in abeyance pending the outcome of the substantive issues in the contested case and the proposed order decides substantive issues in favor of protester, the proposed order shall include a notice of time and place for a hearing on the issue of whether reasonable litigation costs shall be awarded and on the issue of amount of such award, unless the parties agree otherwise.

When a motion has been made to delete identifying details in an order on the basis of personal privacy or trade secrets, the justification for such deletion or refusal to delete shall be made by the moving party and shall appear in the order.

When the director initially presides at a hearing or considers decisions on appeal from, or review of the administrative law judge, the order becomes the final order of the department for purposes of judicial review or rehearing unless there is an appeal to, or review on motion of a second agency within the time provided by statute or rule. When an administrative law judge presides at the hearing, the order becomes the final order of the department for purposes of judicial review or rehearing unless there is an appeal to, or review on motion of, the director within 30 days of the date of the order, or 10 days, excluding Saturdays, Sundays, and legal holidays, for a revocation order pursuant to rule 701—7.24(17A). However, if the contested case proceeding involves a question of an award of reasonable litigation costs, the proposed order on the substantive issues shall not be appealable to, or reviewable by the director on the director's motion, until the issuance of a proposed order on the reasonable litigation costs. If there is no such appeal or review within 30 days or 10 days, whichever is applicable, from the date of the proposed order on reasonable litigation costs, both the proposed order on the substantive issues and the proposed order on the reasonable litigation costs become the final orders of the department for purposes of judicial review or rehearing. On an appeal from, review of or applications for rehearing concerning the administrative law judge's order, the director has all the power which the director would initially have had in making the decision, however, the director will only consider those issues or selected issues presented at the hearing before the administrative law judge or any issues of fact or law raised independently by the administrative law judge, including the propriety of and the authority for raising issues. The parties will be notified of those issues which will be considered by the director.

Orders will be issued within a reasonable time after termination of the hearing. Parties shall be promptly notified of each order by delivery to them of a copy of the order by personal service or certified mail, return receipt requested, except in the case of an order revoking a sales or use tax permit or a motor fuel license which may be delivered by ordinary mail.

A cross-appeal may be taken within the 30-day period for taking an appeal to the director of revenue or in any event within 5 days after the appeal to the director is taken. If a cross-appeal is taken from a revocation order pursuant to rule 701—7.24(17A), the cross-appeal may be taken within the 10-day period for taking an appeal to the director or in any event within 5 days after the appeal to the director is taken.

7.17(6) *Expedited cases—when applicable.* In case a protest is filed where:

1. The case is not of precedential value, and

2. The parties desire a prompt resolution of the dispute, then the department and the protester may agree to have the case designated as an expedited case.

a. *Agreement.* The department and the protester shall execute an agreement to have the case treated as an expedited case. In this case, discovery is waived. The provisions of this agreement shall constitute a waiver of the rights set forth in Iowa Code chapter 17A for contested case proceedings.

b. *Finality of decision.* A decision entered in an expedited case proceeding shall not be reviewed by the director, state board of tax review, or any other court and shall not be treated as a precedent for any other case.

c. *Discontinuance of proceedings.* Any time prior to a decision being rendered, the taxpayer or the department may request that expedited case proceedings be discontinued if there are reasonable grounds to believe that the issues in dispute would be of precedential value.

d. *Procedure.* Upon return of an executed agreement for this procedure, the department shall within 14 days file its answer to the protest. The case shall be docketed for hearing as promptly as the presiding administrative law judge can reasonably hear the matter.

7.17(7) *Burden of proof.* The burden of proof with respect to assessments or denials of refunds in contested case proceedings involving notices of assessments or refund denials issued on or after January 1, 1995, is as follows:

a. The department must carry the burden of proof by clear and convincing evidence as to the issue of fraud with intent to evade tax.

b. The burden of proof is on the department for any tax periods for which the assessment was not made within six years after the return became due, excluding any extension of time for filing such return, except where the department's assessment is the result of the final disposition of a matter between the taxpayer and the Internal Revenue Service or where the taxpayer and the department signed a waiver of the statute of limitations to assess.

c. The burden of proof is on the department as to any new matter or affirmative defense raised by the department. "New matter" means an adjustment not set forth in the computation of the tax in the assessment or refund denial, as distinguished from a new reason for the assessment or refund denial. "Affirmative defense" is one resting on facts not necessary to support the taxpayer's case.

d. In all instances where the burden of proof is not expressly placed upon the department in this subrule, the burden of proof is upon the protester.

7.17(8) *Costs.* A prevailing taxpayer in a contested case proceeding related to the determination, collection, or refund of a tax, penalty, or interest may be awarded reasonable litigation costs by the department, incurred subsequent to the issuance of the notice of assessment or refund denial on or after January 1, 1995, based upon the following:

a. The reasonable expenses of expert witnesses.

b. The reasonable costs of studies, reports, and tests.

c. The reasonable fees of independent attorneys or independent accountants retained by the taxpayer. No such award is authorized for accountants or attorneys who represent themselves or who are employees of the taxpayer.

d. An award for reasonable litigation costs shall not exceed $25,000 per case.

e. No award shall be made for any portion of the proceeding which has been unreasonably protracted by the taxpayer.

f. For purposes of this subrule, "prevailing taxpayer" means a taxpayer who establishes that the position of the department in the contested case proceeding was not substantially justified and who has substantially prevailed with respect to the amount in controversy or has substantially prevailed with respect to the most significant issue or set of issues presented. If the position of the department, in issuance of the assessment or refund denial, was not substantially justified and if the matter is resolved or conceded before the contested case proceeding is commenced, there cannot be an award for reasonable litigation costs.

g. The definition of "prevailing taxpayer" is taken from the definition of "prevailing party" in 26 U.S.C. §7430. Therefore, federal cases determining whether the Internal Revenue Service's position

was substantially justified will be considered in the determination of whether a taxpayer is entitled to an award of reasonable litigation costs to the extent that 26 U.S.C. §7430 is consistent with Iowa Code section 421.60(4).

h. The taxpayer has the burden of establishing the unreasonableness of the department's position.

i. Once a contested case has commenced, a concession by the department of its position or a settlement of the case either prior to the evidentiary hearing or any order issued does not per se either authorize an award of reasonable litigation costs or preclude such award.

j. If the department relied upon information provided or action conducted by federal, state, or local officials or law enforcement agencies with respect to the tax imposed by Iowa Code chapter 453B, an award for reasonable litigation costs shall not be made in a contested case proceeding involving the determination, collection, or refund of that tax.

k. The taxpayer who seeks an award of reasonable litigation costs must specifically request such award in the protest or it will not be considered.

l. A request for an award of reasonable litigation costs shall be held in abeyance until the concession or settlement of the contested case proceeding or the issuance of a proposed order in the contested case proceeding, unless the parties agree otherwise.

m. At the hearing held for the purpose of deciding whether an award for reasonable litigation costs should be awarded, consideration shall be given to the following points:

(1) Whether the department's position was substantially justified;

(2) Whether the protester is the prevailing taxpayer;

(3) The burden is upon protester to establish how the alleged reasonable litigation costs were incurred. This requires a detailed accounting of the nature of each cost, the amount of each cost, and to whom the cost was paid or owed;

(4) Whether alleged litigation costs are reasonable or necessary;

(5) Whether protester has met its burden of demonstrating all of these points.

This rule is intended to implement Iowa Code sections 10A.202(1)*"m,"* 17A.15(3), 421.60, 422.57(1) and 452A.68.

701—7.18(17A) Interventions. Interventions shall be governed by the Iowa rules of civil procedure.

701—7.19(17A) Record and transcript. The record in a contested case shall include:

1. All pleadings, motions and rulings;
2. All evidence received or considered and all other submissions;
3. A statement of all matters officially noticed;
4. All questions and offers of proof, objections, and rulings thereon;
5. All proposed findings and exceptions;
6. The order of the administrative law judge.

Oral hearings regarding proceedings on appeal to or considered on motion of the director which are recorded by mechanical means shall not be transcribed for the record of such appeal or review unless a party, by written notice, or the director, orally or in writing, requests such transcription. A transcription will be made only of that portion of the oral hearing relevant to the appeal or review if so requested and no objection is made by any other party to the proceeding or the director.

701—7.20(17A) Rehearing. Any party may file an application with the director for a rehearing in the contested case, stating the specific grounds therefor and the relief sought. The application must be filed within 20 days after the department has issued a final order. See subrule 7.17(5) as to when a proposed order becomes a final order. A copy of such application shall be timely mailed by the applicant to all parties in conformity with rule 701—7.21(17A). The director shall have 20 days from the filing of the application to grant or deny the rehearing. If the application is granted, a notice will be served on the parties stating the time and place of the rehearing. An application for rehearing shall be deemed denied if not granted by the director within 20 days after filing.

The application for rehearing which is filed shall contain:

1. A caption in the following form:

BEFORE THE IOWA STATE DEPARTMENT OF REVENUE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF _____	*	APPLICATION
(state the taxpayer's name, address	*	FOR
and designate type of proceeding,	*	REHEARING
e.g., income tax refund claim)	*	DOCKET NO. _____

2. Substantially state in separate numbered paragraphs the following:

a. Clear and concise statements of the reasons for requesting a rehearing and each and every error which the party alleges to have been committed during the contested case proceedings;

b. Clear and concise statements of all relevant facts upon which the party relies;

c. Refer to any particular statute or statutes and any rule or rules involved;

d. The signature of the party or that of the party's representative, the addresses of the party or the party's representative, and the telephone number of the party or the party's representative.

No applications for rehearing shall be entertained by the department's administrative law judges.

This rule is intended to implement Iowa Code section 17A.16(2).

701—7.21(17A) Service. All papers or documents required by 701—Chapter 7 to be filed with the department, administrative law judge, with the opposing party or other person shall be served by ordinary mail unless another rule specifically refers to another method. All notices required by 701—Chapter 7 to be served on parties or persons by the department or administrative law judge shall be served by ordinary mail unless another rule specifically refers to another method.

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

701—7.22 Reserved.

701—7.23(17A) Ex parte communications.

7.23(1) *Administrative law judges.* Iowa Code section 17A.17 provides that individuals assigned to render a proposed or final decision or to make findings of fact and conclusions of law in a contested case shall not communicate, directly or indirectly, in connection with any issue of fact or law in that contested case, with any party, or any person with a personal interest in or engaged in prosecuting or advocating in either the case under consideration or a pending factually related case involving the same parties, except upon notice and opportunity for all parties to participate. Therefore, if the administrative law judge desires to communicate with any party or person with a personal interest in or engaged in prosecuting or advocating in either the case under consideration before the administrative law judge or a pending factually related case involving the same parties, the administrative law judge shall notify such persons or parties indicating the time and place at which all affected persons or parties may meet to discuss the matters.

7.23(2) *Parties or their representatives.* Iowa Code section 17A.17 provides further that parties or their representatives in a contested case shall not communicate, directly or indirectly, in connection with any issue of fact or law in that contested case, with individuals assigned to render a proposed or final decision or to make findings of fact and conclusions of law in that contested case, except upon notice and opportunity for all parties to participate. Therefore, if any party or their representative desires to discuss certain matters with the administrative law judge the party should notify the administrative law judge

and the opposing party of the desire to meet with the administrative law judge and the administrative law judge upon notification of the desire shall advise the parties or their representatives in writing of the time and place at which the affected persons or parties may meet to discuss any matters.

7.23(3) *Sanctions.* Any party to a contested case proceeding may file a timely and sufficient affidavit asserting personal bias of an individual participating in the making of any proposed or final decision in that case. The department shall determine the matter as part of the record in the case. When the department in these circumstances makes such a determination with respect to a department member, that determination shall be subject to de novo judicial review in any subsequent review proceeding of the case.

The recipient of a prohibited communication as provided in section 17A.17 may be required to submit the communication if written or a summary of the communication if oral for inclusion in the record of the proceeding. As sanctions for violations of any prohibited communication provided in section 17A.17 a decision may be rendered against a party who violates these rules, or for reasonable cause shown the director may censor, suspend, or revoke a privilege to practice before the department, or for reasonable cause shown after notice and opportunity to be heard, the director may censor, suspend, or dismiss any departmental personnel.

701—7.24(17A) Licenses.

7.24(1) *Denial of license, refusal to renew license.* When the department is required by constitution or statute to provide notice and an opportunity for an evidentiary hearing prior to the refusal or denial of a license, a notice, as prescribed in 7.14(17A), shall be served by the department upon the licensee or applicant. Prior to the refusal or denial of a license, the department shall give 30 days' written notice to the applicant or licensee in which to appear at a hearing to show cause why a license should not be refused or denied. In addition to the requirements of 7.14(17A), the notice shall contain a statement of facts or conduct and the provisions of law which warrant the denial of the license or the refusal to renew a license. If the licensee so desires, the licensee may file a petition as provided in 7.24(3) with the administrative law judge within the 30 days prior to the hearing. The department may, in its discretion, file an answer to a petition filed by the licensee prior to the hearing. Thereafter, the rules contained in this chapter governing contested case proceedings shall apply.

When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the department, and, in case the application is denied or the terms of the new license limited, until the last date for seeking judicial review of the department's order or a latter date fixed by order of the department or the reviewing court. See 195—subrule 20.4(1) regarding gambling license applications.

7.24(2) *Revocation of license.* The department shall not revoke, suspend, annul or withdraw any license until written notice is served by personal service or restricted certified mail pursuant to 7.14(17A) within the time prescribed by the applicable statute and the licensee whose license is to be revoked, suspended, annulled or withdrawn is given an opportunity to show at an evidentiary hearing conducted pursuant to the rules governing contested case proceedings in this chapter compliance with all lawful requirements for the retention of the license. However, in the case of the revocation, suspension, annulment, or withdrawal of a sales or use tax permit, written notice will be served pursuant to 7.14(17A) only if the permit holder requests that this be done following notification, by ordinary mail, of the director's intent to revoke, suspend, annul, or withdraw the permit. In addition to the requirements of 7.14(17A) the notice shall contain a statement of facts or conduct and the provisions of law which warrant the revocation, suspension, annulment, or withdrawal of the license. A licensee whose license may be revoked, suspended, annulled, or withdrawn may file a petition as provided in 7.24(3) with the administrative law judge prior to the hearing. The department may, in its discretion, file an answer to a petition filed by the licensee prior to the hearing. Thereafter, the rules contained in this chapter governing contested case proceedings shall apply.

Notwithstanding the above, if the department finds that public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in an order to the licensee, summary

suspension of a license shall be ordered pending proceedings for revocation as provided herein. These proceedings shall be promptly instituted and determined. When a summary suspension as provided herein is ordered, a notice of the time, place and nature of the evidentiary hearing shall be attached to the order.

7.24(3) *Petition.* When a person desires to file a petition as provided in 7.24(1) and 7.24(2), the petition to be filed shall contain:

a. A caption in the following form:

BEFORE THE IOWA STATE DEPARTMENT OF REVENUE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

	*	
IN THE MATTER OF _____		PETITION
(state taxpayer's name, address and type of license)	*	DOCKET NO. _____
		(filled in by Department)
	*	

b. Substantially state in separate numbered paragraphs the following:

(1) The full name and address of the petitioner;

(2) Refer to the type of license and the relevant statutory authority;

(3) Clear, concise and complete statements of all relevant facts showing why petitioner's license should not be revoked, refused, or denied;

(4) Whether a similar license has previously been issued to or held by petitioner or revoked and if revoked the reasons therefor;

(5) The signature of the petitioner or petitioner's representative, the address of petitioner and of petitioner's representative, and the telephone number of petitioner or petitioner's representative.

701—7.25(17A) Declaratory rulings—in general. Any oral or written advice or opinion rendered to members of the public by departmental personnel not pursuant to a petition for declaratory ruling is not binding upon the department. However, departmental personnel, including field personnel, ordinarily will discuss substantive tax issues with members of the public or their representatives prior to the receipt of a petition for a declaratory ruling, but such oral or written opinions or advice are not binding on the department. This should not be construed as preventing members of the public or their representatives from inquiring whether the department will issue a declaratory ruling on a particular question. In these cases, however, the name of the taxpayer shall be disclosed. The department will also discuss questions relating to certain procedural matters as, for example, submitting a request for a declaratory ruling or submitting a petition to initiate rule-making procedures. Members of the public may, of course, seek oral technical assistance from a departmental employee in regard to the proper preparation of a return or report required to be filed with the department. Such oral advice is advisory only and the department is not bound to recognize it in the examination of the return, report or records.

7.25(1) *Uniform rules on declaratory rulings.* The department hereby adopts, subject to the exceptions and amendments listed in subrule 7.25(2), the rules of the governor's task force on uniform rules of agency procedure relating to declaratory rulings which are printed in Volume I, pages 2 through 4, of the Iowa Administrative Code as uniform rules X.1(17A) through X.7(17A), as its rules on declaratory rulings the same as if those uniform rules were reprinted herein in full.

7.25(2) *Exceptions and amendments to uniform rules on declaratory rulings.* The following exceptions and amendments are adopted to the uniform rules on declaratory rulings.

a. Add at the end of uniform rule X.1(17A), page 3, the following item of additional information:

9. Whether the petitioner is presently under audit by the department.

b. Whenever the context requires, the term "agency" when it appears in uniform rules X.1(17A) through X.7(17A), pages 2 through 4, means the department of revenue.

c. Add at the end of uniform rule X.5(17A), page 3, the following additional reason for refusal to issue a declaratory ruling:

11. The petition requests a ruling on an issue presently under investigation or audit or in rule-making proceedings or in litigation in a contested case or court proceedings.

701—7.26(17A) Department procedure for rule making—in general. Prior to the initiation of rule-making proceedings as provided for in this rule, rules which are proposed for adoption are approved by the director. The channeling of rules varies with the circumstances. When a division determines that a rule or rules should be made on a particular subject, the subject matter of the rule or rules is prepared which is reviewed by the policy section of the technical services division and the director. After approval by the director, a draft of the rule is prepared and the rule-making proceedings are initiated.

When a petition for the promulgation, amendment, or repeal of a rule is received from an interested person, a copy of the petition is given to the appropriate section or division, the director, and the legal division for their views and comments as to the propriety of the petition. If it is determined the petition discloses sufficient justification, rule-making proceedings will be initiated.

7.26(1) *Uniform rules for procedure for rule making.* The department hereby adopts, subject to the exceptions and amendments listed in subrule 7.26(2), the rules of the governor's task force on uniform rules of agency procedure relating to rule making which are printed in Volume I, page 1 and pages 5 through 14, of the Iowa Administrative Code as uniform rules X.1(17A) through X.17(17A), as its rules for rule-making procedure the same as if these uniform rules were reprinted herein in full.

7.26(2) *Exceptions and amendments to uniform rules on procedure for rule making.* The following exceptions and amendments are adopted to the uniform rules for rule-making procedure:

a. Whenever the context requires, the term "agency" when it appears in the uniform rules herein adopted means the department of revenue.

b. Inquiries concerning the status of a petition for rule making provided for in uniform rule X.3(17A), page 1 of the uniform rules, may be made to the Deputy Director of Revenue, Hoover State Office Building, Des Moines, Iowa 50319.

c. The subscription price for copies of future Notices of Intended Action for subscribers is fixed for a one-year basis as provided for in uniform rule X.4(3), page 6 of the uniform rules.

d. The Office of the Deputy Director of Revenue, Hoover State Office Building, Des Moines, Iowa 50319, is designated as the office where interested persons may submit argument, data and views on proposed rules as provided for in uniform subrule X.5(1), page 6 of the uniform rules.

e. The Office of the Deputy Director of Revenue, Hoover State Office Building, Des Moines, Iowa 50319, is designated as the office for registering small businesses or organizations of small business for the small business impact list provided for in uniform subrule X.6(3), page 8 of the uniform rules.

f. There are no known categories of rules exempt from the usual public notice and participation requirements as authorized by uniform subrule X.10(2), page 11 of the uniform rules.

g. The Office of the Deputy Director of Revenue, Hoover State Office Building, Des Moines, Iowa 50319, is the designated office for delivery of a request for a concise statement of reason, provided for in subrule X.11(1), page 11 of the uniform rules.

These rules are intended to implement Iowa Code sections 17A.22 and 421.14 and to implement the uniform rules on agency procedure as accepted and approved by the governor.

701—7.27(9C,91C) Procedure for nonlocal business entity bond forfeitures. Upon the failure of a transient merchant or an out-of-state contractor to pay any taxes payable, the amount of bond posted with the secretary of state by the transient merchant or out-of-state contractor necessary to pay the tax shall be forfeited. The following subrules of this rule shall govern the procedure for that forfeiture.

7.27(1) *Definitions.*

a. *"Nonlocal business entity"* is either an out-of-state contractor or a transient merchant as those terms are defined in paragraphs *"b"* and *"f."*

b. "Out-of-state contractor" means a general contractor, subcontractor, architect, engineer, or other person who contracts to perform in this state construction or installation of structures or other buildings or any other work covered by Iowa Code chapter 103A and whose principal place of business is outside Iowa.

c. "Taxes payable by a transient merchant" refers to all taxes administered by the department, and penalties, interest, and fees which the department has previously determined to be due by assessment or due as a result of an appeal from an assessment.

d. "Taxes payable by an out-of-state contractor" means tax, penalty, interest, and fees which the department, another state agency, or a subdivision of the state, has determined to be due by assessment or due as a result of an appeal from an assessment. The tax assessed must accrue as the result of a contract to perform work covered by Iowa Code chapter 103A.

e. "Taxes payable" means any amount referred to in subparagraphs *"c"* and *"d"* above.

f. "Transient merchant" shall be defined, for the purposes of this rule, as that phrase is defined in Iowa Code section 9C.1.

7.27(2) *Increases in existing bonds.* If an out-of-state contractor has on file with the secretary of state a bond for any particular contract and for that particular contract the contractor has tax due and owing but unpaid and this tax is greater than the amount of the bond, the department shall require the out-of-state contractor to increase the bond on file with the secretary of state in an amount sufficient to pay tax liabilities which will become due and owing under the contract in the future.

7.27(3) *Responsibility for notification.* Concerning taxes payable by an out-of-state contractor, which are not administered by the department of revenue, it shall be the duty of the department or subdivision of Iowa state government to which the taxes are owed to notify the department of revenue of the taxes payable by the out-of-state contractor in order to institute bond forfeiture proceedings or an increase in the amount of the bond which the out-of-state contractor must post.

7.27(4) *Initial notification.* After it is determined that a bond ought to be forfeited, notice of this intent shall be sent to a nonlocal business entity and its surety of record, if any. Notice sent to a nonlocal business entity or its surety shall be sent to the last known address as reflected in the records of the secretary of state. The notice sent to an out-of-state contractor shall also be mailed to the contractor's registered agent for service of process, if any, within Iowa. This notice may be sent by ordinary mail. The notice shall state the intent to demand forfeiture of the nonlocal business entity's bond, the amount of bond to be forfeited, the nature of the taxes alleged to be payable, the period for which these taxes are due, and the department or subdivision of Iowa to which the taxes are payable. The notice shall also state the statutory authority for the forfeiture and the right to a hearing upon timely application.

7.27(5) *Protest to bond forfeiture.* The application of a nonlocal business entity for a hearing shall be written and substantially in the form set out for protests to other departmental action in 701—7.8(17A). The caption of the application shall be basically in the form set out in subrule 7.8(1) except the type of proceeding shall be designated as a bond forfeiture collection. The body of the application for hearing must substantially resemble the body of the protest described in subrule 7.8(2). However, referring to subrule 7.8(2), paragraph *"a,"* the nonlocal business entity shall state the date of the notice described in subrule 7.27(4). With regard to subrule 7.8(2), paragraph *"c,"* in the case of a tax payable which is not administered by the department, the errors alleged may be errors on the part of other departments or subdivisions of the state of Iowa. The application for hearing shall be filed with the department's administrative law judge in the manner described in 701—7.8(17A). The docketing of an application for hearing shall follow the procedure for the docketing of a protest under that rule.

7.27(6) *Prehearing, hearing and rehearing procedures.* The following Chapter 7 rules are applicable to preliminary and contested case proceedings under this rule: 7.3(17A) to 7.7(17A), 7.9(17A) to 7.13(17A), 7.15(17A) to 7.21(17A), 7.23(17A), and subrule 7.14(2). The strictures of subrule 7.14(1) are not applicable to contested cases arising under this rule.

7.27(7) *Sureties and state departments other than revenue.* A surety shall not have standing to contest the amount of any tax payable.

If there exist taxes payable by an out-of-state contractor and these taxes are payable to a department or subdivision of state government other than the department of revenue, that department or subdivision

shall be the real party in interest to any proceeding conducted under this rule, and it shall be the responsibility of that department or subdivision to provide its own representation and otherwise bear the expenses of representation.

Rules 7.1(17A) to 7.27(9C,91C) are intended to implement Iowa Code sections 9C.4, 17A.1(2), 17A.2(2), 17A.11, 91C.7, and 421.8A.

701—7.28 and **7.29** Reserved.

701—7.30(421) Definitions which apply to rules 701—7.31(421) to 701—7.35(421).

7.30(1) The term *"entity"* means any taxpayer other than an individual or sole proprietorship.

7.30(2) The term *"last-known address"* does not necessarily mean the taxpayer's actual address but instead means the last address that the taxpayer makes known to the department by tax type. Thus, for instance, receipt by the department of a taxpayer's change of address from a third person not authorized to act on behalf of the taxpayer (e.g., an employer who had filed a form W-2 showing a new taxpayer address) is not notice to the department of a change of address of the taxpayer. However, the filing by the taxpayer of a tax return for a year subsequent to the year for which a notice is required would be notification to the department of a change of address, provided a reasonable amount of time is allowed to process and transfer such information to the department's central computer system. The meaning of this phrase is important, and taxpayers should be aware of their need to update their address with the department in order to receive refunds of tax and notices of assessments and denial of a claim for refund. When such a notice is sent to a "taxpayer's last-known address" the notice is legally effective even if the taxpayer never receives it.

7.30(3) The term *"taxpayer interview"* means any in-person contact from and after January 1, 1995, between an employee of the department and a taxpayer or a taxpayer's representative which has been initiated by a department employee.

7.30(4) The term *"taxpayer representative"* or *"authorized taxpayer representative"* means an individual authorized to practice before the department under rule 701—7.6(17A); an individual who has been named as an authorized representative on a fiduciary return of income form filed under Iowa Code section 422.14, or a tax return filed under Iowa Code chapter 450, "Inheritance Tax," 450A, "Generation Skipping Tax," or 451, "Estate Tax"; or for proceedings before the department any other individual the taxpayer designates who is named on a valid power of attorney if appearing on behalf of another.

This rule is intended to implement Iowa Code section 421.60.

701—7.31(421) Abatement of unpaid tax. For assessment notices issued on or after January 1, 1995, if the statutory period for appeal has expired, the director may abate any portion of unpaid tax, penalties or interest which the director determines is erroneous, illegal, or excessive. The authority of the director to compromise and settle doubtful and disputed claims for taxes or tax refunds or tax liability of doubtful collectability is not covered by this rule.

This authority exists pursuant to Iowa Code section 421.5.

7.31(1) *Assessments qualifying for abatement.* To be subject to an abatement, an assessment or a portion of an assessment for which abatement is sought must not have been paid and must have exceeded the amount due as provided by the Iowa Code and the administrative rules issued by the department interpreting the Iowa Code. If a taxpayer fails to timely appeal an assessment that is based on the Iowa Code or the department's administrative rules interpreting the Iowa Code within the statutory period, then the taxpayer cannot request an abatement of the assessment, or a portion thereof.

7.31(2) *Procedures for requesting abatement.* The taxpayer must make a written request to the director for abatement of that portion of the assessment that is alleged to be erroneous, illegal, or excessive. A request for abatement which is filed must contain:

a. The taxpayer's name and address, social security number, federal identification number, or any permit number issued by the department;

b. A statement on the type of proceeding, e.g., individual income tax, request for abatement; and

c. The following information:

(1) The type of tax, the taxable period or periods involved, and the amount thereof that was excessive or erroneously or illegally assessed;

(2) Clear and concise statements of each and every error which the taxpayer alleges to have been committed by the director in the notice of assessment and which causes the assessment to be erroneous, illegal, or excessive. Each assignment of error must be separately numbered;

(3) Clear and concise statements of all relevant facts upon which the taxpayer relies (documents verifying the correct amount of tax liability must be attached to this request);

(4) Refer to any particular statute or statutes and any rule or rules involved, if known;

(5) The signature of the taxpayer or that of the taxpayer's representative and the addresses of the taxpayer and the taxpayer's representative;

(6) Description of records or documents which were not available or were not presented to department personnel prior to the filing of this request, if any; and provide copies of any records or documents that were not previously presented to the department; and

(7) Any other matters deemed relevant and not covered in the above paragraphs.

This rule is intended to implement Iowa Code section 421.60.

701—7.32(421) Time and place of taxpayer interviews. The time and place of taxpayer interviews are to be fixed by an employee of the department and employees are to endeavor to schedule a time and place that are reasonable under the circumstances.

7.32(1) *Time of taxpayer interviews.* The department will schedule the day(s) for a taxpayer interview during a normally scheduled workday(s) of the department, during the department's normal business hours. The department will schedule taxpayer interviews throughout the year without regard to seasonal fluctuations in the business of particular taxpayers or their representatives. The department will, however, work with taxpayers or their representatives to try to minimize any adverse effects in scheduling the date and time of a taxpayer interview.

7.32(2) *Type of taxpayer interview.* The department will determine whether a taxpayer interview will be an office interview (i.e., an interview conducted at a department office) or a field interview (i.e., an interview conducted at the taxpayer's place of business or residence, or some other location that is not a department office) based on which form of interview will be more conducive to effective and efficient tax administration.

The department will grant a request to hold an office interview at a location other than a department office in case of a clear need, such as when it would be unreasonably difficult for the taxpayer to travel to a department office because of the taxpayer's advanced age or infirm physical condition, or when the taxpayer's books, records, and source documents are too cumbersome for the taxpayer to bring to a department office.

7.32(3) *Place of taxpayer interview.* The department will make an initial determination of the place for an interview, including the department region office to which an interview will be assigned, based on the address shown on the return for the tax period to be examined. Requests by taxpayers to transfer the place of interview will be resolved on a case-by-case basis, using the criteria set forth in paragraph *"c"* of this subrule.

a. *Office taxpayer interviews.* An office interview of an individual or sole proprietorship generally is based on the residence of the individual taxpayer. An office interview of a taxpayer which is an entity generally is based on the location where the taxpayer entity's original books, records, and source documents are maintained.

b. *Field taxpayer interviews.* A field interview generally will take place at the location where the taxpayer's original books, records, and source documents pertinent to the interview are maintained. In the case of a sole proprietorship or taxpayer entity, this usually will be the taxpayer's principal place of business. If an interview is scheduled by the department at the taxpayer's place of business, which is a small business and the taxpayer represents to the department in writing that conducting the interview at the place of business would essentially require the business to close or would unduly disrupt business operations, the department upon verification will change the place of interview.

c. Requests by taxpayers to change place of interview. The department will consider, on a case-by-case basis, written requests by taxpayers or their representatives to change the place that the department has set for an interview. In considering these requests, the department will take into account the following factors:

(1) The location of the taxpayer's current residence;

(2) The location of the taxpayer's current principal place of business;

(3) The location where the taxpayer's books, records, and source documents are maintained;

(4) The location at which the department can perform the interview most efficiently;

(5) The department resources available at the location to which the taxpayer has requested a transfer; and

(6) Other factors that indicate that conducting the interview at a particular location could pose undue inconvenience to the taxpayer.

A request by a taxpayer to transfer the place of interview generally will be granted under the following circumstances:

1. If the current residence of the taxpayer in the case of an individual or sole proprietorship, or the location where the taxpayer's books, records, and source documents are maintained, in case of a taxpayer entity, is closer to a different department office than the office where the interview has been scheduled, the department normally will agree to transfer the interview to the closer department office.

2. If a taxpayer does not reside at the residence where an interview has been scheduled, the department will agree to transfer the examination to the taxpayer's current residence.

3. If, in the case of an individual, a sole proprietorship, or a taxpayer entity, the taxpayer's books, records, and source documents are maintained at a location other than the location where the interview has been scheduled, the department will agree to transfer the interview to the location where the taxpayer's books, records, and source documents are maintained.

4. The location of the place of business of a taxpayer's representative generally will not be considered in determining the place for an interview. However, the department in its sole discretion may determine, based on the factors described in paragraph *"c"* of this subrule, to transfer the place of interview to the representative's office.

5. If any applicable period of limitations of assessment and collection provided in the Iowa Code will expire within 13 months from the date of a taxpayer's request to transfer the place of interview, the department may require, as a condition to the transfer, that the taxpayer agree in writing to extend the limitations period up to one year.

6. The department is not required to transfer an interview to an office that does not have adequate resources to conduct the interview.

7. Notwithstanding any other provision of this rule, employees of the department may decline to conduct an interview at a particular location if it appears that the possibility of physical danger may exist at that location. In these circumstances, the department may transfer an interview to a department office and take any other steps reasonably necessary to protect its employees.

8. Nothing in this rule shall be interpreted as precluding the department from initiating the transfer of an interview if the transfer would promote the effective and efficient conduct of the interview. Should a taxpayer request that such a transfer not be made, the department will consider the request according to the principles and criteria set forth in paragraph *"c"* of this subrule.

9. Regardless of where an examination takes place, the department may visit the taxpayer's place of business or residence to establish facts that can only be established by direct visit, such as inventory or asset verification. The department generally will visit for these purposes on a normal workday of the department during the department's normal business hours.

7.32(4) *Audio recordings of taxpayer interviews.*

a. A taxpayer is permitted, upon advance notice to the department, to make an audio recording of any interview of the taxpayer by the department relating to the determination or collection of any tax. The recording of the interview is at the taxpayer's own expense and must be with the taxpayer's own equipment.

Requests by taxpayers to make audio recordings must be addressed to the department employee who is conducting the interview and must be received by no later than ten calendar days before the interview. If ten calendar days' advance notice is not given, the department may, in its discretion, conduct the interview as scheduled or set a new date.

The department employee conducting the interview will approve the request to record the interview if:

(1) The taxpayer (or representative) supplies the recording equipment;

(2) The department may produce its own recording of the proceedings;

(3) The recording takes place in a suitable location; and

(4) All participants in the proceedings other than department personnel consent to the making of the audio recording, and all participants identify themselves and their role in the proceedings.

b. A department employee is also authorized to record any taxpayer interview, if the taxpayer receives prior notice of the recording and is provided with a transcript or a copy of the recording upon the taxpayer's request.

Requests by taxpayers (or their representatives) for a copy or transcript of an audio recording produced by the department must be addressed to the employee conducting the interview and must be received by the department no later than 30 calendar days after the date of the recording. Taxpayers must pay the costs of duplication or transcription.

c. At the beginning of the recording of an interview the department employee conducting the interview must state the employee's name, the date, the time, the place, and the purpose of the interview.

At the end of the interview, the department employee will state that the interview has been completed and that the recording has ended.

d. When written records are presented or discussed during the interview being recorded, they must be described in sufficient detail to make the audio recording a meaningful record when matched with the other documentation contained in the case file.

This rule is intended to implement Iowa Code section 421.60.

701—7.33(421) Mailing to the last-known address. If the department fails to mail a notice of assessment to the taxpayer's last-known address or fails to personally deliver the notice to the taxpayer, on or after January 1, 1995, interest is waived for the month the failure occurs through the month of correct mailing or personal delivery.

In addition, on or after January 1, 1995, if the department fails to mail a notice of assessment or denial of a claim for refund to the taxpayer's last-known address or fails to personally deliver the notice to a taxpayer and, if applicable, to the taxpayer's authorized representative, the time period to appeal the notice of assessment or a denial of a claim for refund is suspended until the notice or claim denial is correctly mailed or personally delivered or for a period not to exceed one year, whichever is the lesser period.

Collection activities, except when a jeopardy situation exists, shall be suspended and the statute of limitations for assessment and collection of the tax shall be tolled during the period in which interest is waived.

7.33(1) The department will make the determination of the taxpayer's last-known address on a tax-type-by-tax-type basis. However, a notice of assessment or refund claim denial will be considered to be mailed to the last-known address if it is mailed to an address used for another tax type.

A notice of assessment mailed to one of two addresses used by a taxpayer was sufficient. L. P. Marvin, Sr., 40TC 982.Dec. 26, 313; U.C. Massengale, (CA-4) 69-1 USTC paragraph 9310, 408 F.2d 1372.

7.33(2) The last-known address is the address used on the most recent filed and processed return. The following principles, established by case law, for the Internal Revenue Service (IRS) also will be applied in determining the taxpayer's last-known address for purposes of this rule.

Although the taxpayer filed a tax return showing a new address, the IRS had not processed the return sufficiently for the new address to be available by computer to the IRS agent who sent the notice of deficiency. Before a change of address is considered available, a reasonable amount of time must

be allowed to process and transfer information to the IRS' central computer system. *Diane Williams v. Commissioner of Internal Revenue*, U.S. Court of Appeals, 9th Circuit; 935 F. 2d 1066. Affirming the Tax Court, 57 TCM 1357, Dec. 45, 953(M), TAC Memo. 1989-439.

If the department knows the taxpayer has moved but does not know the new mailing address, the prior mailing address is the proper place to send a deficiency notice. M. Kaestner, CDC 71-2 USTC paragraph 9512, 329 F. Supp. 1082. Aff'd per curiam, (CA-9) 73-1 USTC paragraph 9266, 473 F. 2d 1294. H. Kohn, DC Mass, 85-2 USTC paragraph 9725.

Knowledge acquired by a collection agent regarding the taxpayer's address in an unrelated investigation was not required to be imputed to the examination division responsible for mailing a notice of deficiency. R. H. Wise, DC Mont., 88-1 USTC paragraph 9365, 688 F. Supp. 1164.

However, information acquired by the department in a related investigation of the taxpayer is binding upon the department, e.g., where the taxpayer files a power of attorney showing a change of address.

7.33(3) Procedures for notifying the department of a change in taxpayer's address. The department generally will use the address on the most recent filed and properly processed return by tax type as the address of record for all notices of assessment and denial of claims for refund. If a taxpayer no longer wishes the address of record to be the address on the most recently filed return, the taxpayer must give clear and concise written notification of a change in address to the department. Notifications of a change in address should be addressed to: Changes in Name or Address, Iowa Department of Revenue, P.O. Box 10413, Des Moines, Iowa 50306.

If after a joint return or married filing separately on a combined return is filed either taxpayer establishes a separate residence, each taxpayer should send clear and concise written notification of a current address to the department.

If a department employee contacts a taxpayer in connection with the filing of a return or an adjustment to a taxpayer's return, the taxpayer may provide clear and concise written notification of a change of address to the department employee who initiated the contact.

A taxpayer should notify the U.S. Postal Service facility serving the taxpayer's old address of the taxpayer's new address in order that mail from the department can be forwarded to the new address. However, notification to the U.S. Postal Service does not constitute the clear and concise written notification that is required to change a taxpayer's address of record with the department.

This rule is intended to implement Iowa Code section 421.60.

701—7.34(421) Power of attorney. No attorney, accountant, or other representative will be recognized as representing any taxpayer in regard to any claim, appeal, or other matter relating to the tax liability of such taxpayer in any hearing before or conference with the department, or any member or agent thereof, unless there is first filed with the department a written authorization.

7.34(1) A power of attorney is required by the department when the taxpayer wishes to authorize an individual to perform one or more of the following acts on behalf of the taxpayer:

a. To receive copies of any notices or documents sent by the department, its representatives or its attorneys.

b. To receive, but not to endorse and collect, checks in payment of any refund of Iowa taxes, penalties, or interest.

c. To execute waivers (including offers of waivers) of restrictions on assessment or collection of deficiencies in tax and waivers of notice of disallowance of a claim for credit or refund.

d. To execute consents extending the statutory period for assessment or collection of taxes.

e. To fully represent the taxpayer(s) in any hearing, determination, final or otherwise, or appeal.

f. To enter into any compromise with the director of revenue's office.

g. To execute any release from liability required by the department of revenue prerequisite to divulging otherwise confidential information concerning taxpayer(s).

h. Other acts as stipulated by the taxpayer.

7.34(2) A power of attorney or any supplemental notification intended to be utilized as a power of attorney must contain the following information to be valid:

a. Name and address of the taxpayer;

b. Identification number of the taxpayer (i.e., social security number, federal identification number, or any state-issued tax identification number relative to matters covered by the power of attorney);

c. Name, mailing address, and PTIN (preparer's tax identification number), FEIN (federal employer identification number) or SSN (social security number) of the representative;

d. Description of the matter(s) for which representation is authorized which, if applicable, must include:

(1) The type of tax(es) involved;

(2) The specific year(s) or period(s) involved; and

(3) In estate matters, decedent's date of death; and

e. A clear expression of the taxpayer's intention concerning the scope of authority granted to the recognized representative(s) as provided in 7.34(1).

7.34(3) A power of attorney may not be used for tax periods that end more than three years after the date on which the power of attorney is received by the department. A power of attorney may concern an unlimited number of tax periods which have ended prior to the date on which the power of attorney is received by the department; however, each tax period must be separately stated.

7.34(4) The individual who must execute a power of attorney depends on the type of taxpayer involved as follows:

a. *Individual taxpayer.* In matters involving an individual taxpayer, a power of attorney must be signed by the individual.

b. *Husband and wife.* In matters involving a joint return or married taxpayers who have elected to file separately on a combined return in which both husband and wife are to be represented by the same representative(s), the power of attorney must be executed by both husband and wife.

In any matters concerning a joint return or married taxpayers who have elected to file separately on a combined return in which both husband and wife are not to be represented by the same representatives, the power of attorney must be executed by the spouse who is to be represented. However, the recognized representative of such spouse cannot perform any act with respect to a tax matter that the spouse represented cannot perform alone.

c. *Corporation.* In the case of a corporation, a power of attorney must be executed by an officer of the corporation having authority to legally bind the corporation, who must certify that the officer has such authority.

d. *Association.* In the case of an association, a power of attorney must be executed by an officer of the association having authority to legally bind the association, who must certify that the officer has such authority.

e. *Partnership.* In the case of a partnership, a power of attorney must be executed by all partners, or if executed in the name of the partnership, by the partner or partners duly authorized to act for the partnership, who must certify that the partner(s) has such authority.

7.34(5) A power of attorney is not needed for individuals who have been named as an authorized representative on a fiduciary return of income filed under Iowa Code section 422.14 or a tax return filed under Iowa Code chapter 450, 450A or 451.

7.34(6) A new power of attorney for a particular tax type(s) and tax period(s) revokes a prior power of attorney for that tax type(s) and tax period(s), unless the taxpayer has indicated on the power of attorney form that a prior power of attorney is to remain in effect. For a previously designated representative to remain as the taxpayer's representative when a subsequent power of attorney form is filed, a taxpayer must attach a copy of the previously submitted power of attorney form which designates the representative that the taxpayer wishes to retain. To revoke a designated power of attorney without appointing a new power of attorney, see 7.34(7).

EXAMPLE A. A taxpayer executes a power of attorney for the taxpayer's accountant to represent the taxpayer during an audit of the taxpayer's books and records. After the department issues a notice of assessment, the taxpayer wishes to have the taxpayer's attorney-at-law as an authorized representative in addition to the taxpayer's accountant. The taxpayer may use one of two options to designate the accountant and the attorney-at-law as the taxpayer's representatives: (1) the taxpayer may complete and

submit to the department a new power of attorney, Form IA2848 or federal Form 2848, designating both the accountant and the attorney-at-law as the taxpayer's authorized representatives. By submitting a new power of attorney form, the prior power of attorney designations are revoked, leaving only the subsequent new power of attorney form effective; or (2) the taxpayer may properly complete a new power of attorney form by including the designated attorney-at-law's name, address, PTIN, FEIN or SSN, tax type(s) and tax period(s) on the first page and checking the appropriate box on page 2 of Form IA2848 or page 2 of federal Form 2848. In addition, to retain the accountant as the taxpayer's representative, the taxpayer must also attach to the new completed power of attorney form a copy of the previously submitted power of attorney form designating the accountant as the taxpayer's representative.

EXAMPLE B. Same factual scenario as in Example A applies; however, the taxpayer seeks to use power of attorney Form IA14-101 (a form that preceded the current Form IA2848). In this situation, the taxpayer must attach a statement to the completed Form IA14-101. The statement must state that the previously designated accountant is to be retained and the attorney-at-law is to be added. Such notification must also include the names, PTIN, SSN or FEIN of all the parties, addresses, tax types(s) and tax period(s) of representation.

EXAMPLE C. A taxpayer wishes to designate an additional power of attorney and retain a prior power of attorney. However, the taxpayer does not wish to utilize an IA2848 or federal 2848 form. In this situation, the taxpayer must send written notification to the department designating the new power of attorney's name, address, PTIN, SSN or FEIN, the tax type(s), the tax period(s) of representation and the name, address, and PTIN, SSN or FEIN of the previously designated power of attorney that the taxpayer seeks to retain for that tax period.

In each of the foregoing examples, the original power of attorney will continue to automatically receive the notices concerning the specified tax matter, unless such authority is explicitly revoked by the taxpayer. Also see subrule 7.34(13) regarding notices.

7.34(7) A taxpayer may revoke a power of attorney without authorizing a new representative by filing a statement of revocation with the department. The statement of revocation must indicate that the authority of the previous power of attorney is revoked and must be signed by the taxpayer. Also, the name and address of each representative whose authority is revoked must be listed (or a copy of the power of attorney must be attached).

7.34(8) A representative may withdraw from representation in a matter in which a power of attorney has been filed by filing a statement with the department. The statement must be signed by the representative and must identify the name and address of the taxpayer(s) and the matter(s) from which the representative is withdrawing.

7.34(9) A properly completed Iowa power of attorney, Form IA14-101 or IA2848, or properly designated federal form as described in this subrule, satisfies the requirements of this rule.

In addition to the Iowa power of attorney, Form IA2848 or IA14-101, the department can accept Internal Revenue Service Form 2848, if references to the "Internal Revenue Service" are crossed out and "Iowa Department of Revenue" is inserted in lieu thereof, as long as such a form contains specific designation by the taxpayer for the state-related taxes at issue. Designation must include, but is not limited to, name, address, PTIN, SSN or FEIN of the representative, the tax type(s) and tax period(s). In addition, the department will accept any other document which satisfies the requirements of this rule.

7.34(10) The department will not recognize as a valid power of attorney a power of attorney form attached to a tax return filed with the department except in the instance of a form attached to a fiduciary return of income form, inheritance tax return, generation skipping tax return, or estate tax return.

7.34(11) The department will accept either the original, an electronically scanned and transmitted power of attorney form, or a copy of a power of attorney. A copy of a power of attorney received by facsimile transmission (fax) will be accepted. All copies, facsimiles and electronically scanned and transmitted power of attorney forms must include a valid signature of the taxpayer to be represented.

7.34(12) If an individual desires to represent a taxpayer through correspondence with the department, the individual must submit a power of attorney even though no personal appearance is contemplated.

7.34(13) Any notice or other written communication (or copy thereof) required or permitted to be given to the taxpayer in any matter before the department must be given to the taxpayer and, unless

restricted by the taxpayer, to the taxpayer's first designated power of attorney who is representing the taxpayer for the tax type(s) and tax period(s) contained in the notice. Due to limitations of the department's automated systems, it is the general practice of the department to limit distribution of copies of documents by the department to the taxpayer's first designated power of attorney. Determination of the first designated power of attorney will be based on the earliest execution date of the power of attorney and the first name designated on a power of attorney form listing more than one designated representative.

7.34(14) Information from power of attorney forms, including the representative's PTIN, SSN or FEIN, is utilized by department personnel to:

a. Determine whether a representative is authorized to receive or inspect confidential tax information;

b. Determine whether the representative is authorized to perform the acts set forth in subrule 7.34(1);

c. Send copies of computer-generated notices and communications to the representative as authorized by the taxpayer; and

d. Ensure that the taxpayer's representative receives all notices and communications authorized by the taxpayer, but notices and communications are not sent to a representative with the same or similar name.

7.34(15) Procedure for waiver. Any person who believes that the application of this rule would result in hardship or injustice to that person may petition the department for a waiver in the manner set out in Section II of the governor's Executive Order Number 11, issued September 13, 1999, until superceded by a uniform departmental waiver rule.

This rule is intended to implement Iowa Code section 421.60.

701—7.35(421) Taxpayer designation of tax type and period to which voluntary payments are to be applied.

7.35(1) A taxpayer may designate in separate written instructions accompanying the payment the type of tax and tax periods to which any voluntary payment is to be applied. The taxpayer may not designate the application of payments which are the result of enforced collection.

7.35(2) Enforced collection includes, but is not limited to garnishment of wages, bank accounts, or payments due the taxpayer, or seizure of assets.

This rule is intended to implement Iowa Code section 421.60.

DIVISION II
INFORMAL, FORMAL, ADMINISTRATIVE AND JUDICIAL REVIEW PROCEDURES
APPLICABLE TO CONTESTED CASES AND OTHER PROCEEDINGS
COMMENCED ON OR AFTER JULY 1, 1999

701—7.36(421,17A) Applicability and scope of rules. Effective July 1, 1999, the rules contained in this division pertain to practice and procedure and are designed to implement the requirements of the Act, and aid in the effective and efficient administration and enforcement of the tax laws of this state and other activities of the department. These rules shall govern the practice, procedure and conduct of the informal proceedings, contested case proceedings, licensing, rule making, and declaratory orders involving taxation and other areas within the department's jurisdiction which includes the following:

1. Sales tax—Iowa Code sections 422.42 to 422.59;
2. Use tax—Iowa Code chapter 423;
3. Individual and fiduciary income tax—Iowa Code sections 422.4 to 422.31 and 422.110 to 422.112;
4. Franchise tax—Iowa Code sections 422.60 to 422.66;
5. Corporate income tax—Iowa Code sections 422.32 to 422.41 and 422.110 to 422.112;
6. Withholding tax—Iowa Code sections 422.16 and 422.17;
7. Estimated tax—Iowa Code sections 422.16, 422.17 and 422.85 to 422.92;
8. Motor fuel tax—Iowa Code chapter 452A;
9. Property tax—Iowa Code chapters 421, 425, 426A, 427, 427A, 428, 428A and 433 to 441;
10. Cigarette and tobacco tax—Iowa Code chapters 421B and 453A;
11. Inheritance, generation skipping transfer, and estate tax—Iowa Code chapters 450, 450A, 450B and 451;
12. Local option taxes—Iowa Code chapter 422B;
13. Hotel and motel tax—Iowa Code chapter 422A;
14. Drug excise tax—Iowa Code chapter 453B;
15. Automobile rental excise tax—Iowa Code chapter 422C;
16. Environmental protection charge—Iowa Code chapter 424;
17. Replacement taxes—Iowa Code chapter 437A;
18. Statewide property tax—Iowa Code chapter 437A;
19. Set-off procedures—Iowa Code section 421.17(29);
20. Other taxes and activities as may be assigned to the department from time to time; and
21. The Taxpayer's Bill of Rights—Iowa Code section 421.60.

As the purpose of these rules is to facilitate business and advance justice, any rule contained herein, pursuant to statutory authority, may be suspended or waived by the department to prevent undue hardship in any particular instance or to prevent surprise or injustice.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

701—7.37(421,17A) Definitions. These definitions apply to the rules contained in Division II, unless the text otherwise states to the contrary:

"Act" means the Iowa administrative procedure Act.

"Affiliate or subsidiary of an entity dominant in its field of operation" means an entity which is at least 20 percent owned by an entity that is dominant in its field of operation, or by a partner, officer, director, majority stockholder or the equivalent, of an entity dominant in that field of operation.

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

"Contested case" means a proceeding, including licensing, in which the legal rights, duties or privileges of a party are required by constitution or statute to be determined by an agency after an opportunity for an evidentiary hearing. This term also includes any matter defined as a no factual dispute contested case under 1998 Iowa Acts, chapter 1202, section 14.

"Declaratory order" is an order issued pursuant to 1998 Iowa Acts, chapter 1202, section 13.

"Department" means the Iowa department of revenue.

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

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

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

"Dominant in its field of operation" means having more than 20 full-time equivalent positions and more than $1 million in annual gross revenues.

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

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

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

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

"Motion" has the same meaning as the term is defined in Iowa R. Civ. P. 1.431.

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

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

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

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

"Presiding officer" means the person designated to preside over a proceeding involving the department. A presiding officer of a contested case involving the department will be either the director or a qualified administrative law judge appointed, pursuant to Iowa Code chapter 17A, by the division of administrative hearings established pursuant to 1998 Iowa Acts, chapter 1202, section 3. In cases in which the department is not a party, at the director's discretion, the presiding officer may be the director or the director's designee. A presiding officer of an administrative appeal is the director of the department.

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

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

"Protester" means any person entitled to file a protest which can culminate in a contested case proceeding.

"Provision of law" means the whole or part of the Constitution of the United States of America or the Constitution of the State of Iowa, or of any federal or state statute, court rule, executive order of the governor, or rule of the department.

"Review unit" means the unit composed of department employees designated by the director and the attorney general's staff who have been assigned by the director to review protests filed by taxpayers.

"Rule" means a statement by the department of general applicability that implements, interprets, or prescribes law or policy, or that describes the organization, procedure, or practice requirements of the department. Notwithstanding any other statute, the term includes an executive order or directive of the governor which creates an agency or establishes a program or which transfers a program between agencies established by statute or rule. The term includes the amendment or repeal of an existing rule, but does not include the excluded items set forth in Iowa Code section 17A.2(10).

"Small business" means any entity including, but not limited to, an individual, partnership, corporation, joint venture, association, or cooperative. A "small business" is not an affiliate of an entity dominant in its field or operation. A small business has either 20 or fewer full-time equivalent positions or less than $1 million in annual gross revenues in the preceding fiscal year.

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

This rule is intended to implement Iowa Code chapter 17A and Iowa Code section 421.14.

701—7.38(421,17A) Applicability of rules set forth in Division I of Chapter 7. Many of the rules governing informal, administrative and judicial review proceedings were not required to be changed by 1998 Iowa Acts, chapter 1202. Accordingly, the following rules are incorporated by reference into this division and will govern their respective topics in relation to proceedings under this division:

701—7.4(17A) Computation of time, filing of documents;

701—7.5(17A) Form and style of papers;

701—7.7(17A) Resolution of tax liability;

701—7.18(17A) Interventions;

701—7.27(9C,91C) Procedure for nonlocal business entity bond forfeitures;

701—7.30(421) Definitions which apply to rule 701—7.31(421) to 701—7.35(421);

701—7.31(421) Abatement of unpaid tax;

701—7.32(421) Time and place of taxpayer interviews;

701—7.33(421) Mailing to the last-known address;

701—7.34(421) Power of attorney; and

701—7.35(421) Taxpayer designation of tax type and period to which voluntary payments are to be applied.

701—7.39(17A) Business hours. The principal office of the department in the Hoover State Office Building in Des Moines, Iowa, shall be open between the hours of 8 a.m. and 4:30 p.m. each weekday except Saturdays, Sundays and legal holidays as prescribed in Iowa Code section 4.1(34), for the purpose of receiving protests, pleadings, petitions, motions, requests for public information, copies of official documents, or for the opportunity to inspect public records.

All documents or papers required to be filed with the department by these rules shall be filed with the designated clerk of the hearings section in the principal office of the department in the Hoover State Office Building, Des Moines, Iowa 50319. Requests for public information or copies of official documents or the opportunity to inspect public records shall be made in the director's office at the department's principal office.

All documents or papers filed with an administrative law judge appointed by the division of administrative hearings to be a presiding officer shall be filed with the Department of Inspections and Appeals, Division of Administrative Hearings, Third Floor, Lucas State Office Building, Des Moines, Iowa 50319.

701—7.40(17A) Persons authorized to represent themselves or others. Due to the complex questions involved and the technical aspects of taxation, persons are encouraged to seek the aid, advice, assistance and counsel of practicing attorneys and certified public accountants.

The right to represent one's self or others in connection with any proceeding before the department or administrative hearings division shall be limited to the following classes of persons:

1. Taxpayers who are natural persons representing themselves;
2. Attorneys duly qualified and entitled to practice in the courts of the state of Iowa;
3. Attorneys who are entitled to practice before the highest court of record of any other state and who have complied with Iowa Ct.R. 31.14;
4. Accountants who are authorized, permitted, or licensed under Iowa Code chapter 542C;

5. Duly authorized directors or officers of corporations representing the corporation of which they are respectively a director or officer, excluding attorneys who are acting in the capacity of a director or officer of a corporation and who have not met the requirements of the third classification above;

6. Partners representing their partnership;

7. Fiduciaries;

8. Government officials authorized by law; or

9. Enrolled agents, currently enrolled under 31 CFR §10.6 for practice before the Internal Revenue Service, representing a taxpayer in proceedings under division II of Iowa Code chapter 422.

No person who has served as an official or employee of the department shall within a period of two years after the termination of such service or employment appear before the department or receive compensation for any services rendered on behalf of any person, firm, corporation, or association in relation to any case, proceeding, or application with respect to which the person was directly concerned and in which the person personally participated during the period of service or employment.

Any person appearing in any proceeding involving the department, regardless of whether the department is a party, must have on file with the department a valid Iowa power of attorney.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

701—7.41(17A) Protest. Any person wishing to contest an assessment, denial of refund claim, or any other department action, except licensing, which may culminate in a contested case proceeding shall file a protest, in writing, with the department within the time prescribed by the applicable statute or rule for filing notice of application to the director for a hearing. The protest must be either delivered to the department by electronic means, United States Postal Service or a common carrier, by ordinary, certified, or registered mail, directed to the attention of the clerk of the hearings section for the department, personally delivered to the clerk of the hearings section for the department, or be served on the clerk of the hearings section for the department by personal service during business hours. For the purpose of mailing, a protest is considered filed on the date of the postmark. If a postmark date is not present on the mailed article, then the date of receipt of protest will be considered the date of mailing. Any document, including a protest, is considered filed the date personal service or personal delivery to the office of the clerk of the hearings section for the department is made. See Iowa Code section 622.105 for the evidence necessary to establish proof of mailing.

The period for appealing department action relating to refund claims is the same statutory period for contesting an assessment. Failure to timely file a written protest will be construed as a waiver of opposition to the matter involved unless, on the director's own motion, pursuant to statutory authority, the powers of abatement or settlement are exercised. The review unit, created within the department by the director to review protests as provided in 701—7.44(17A), may seek dismissal of protests which are not in the proper form as provided by this rule. See subrule 7.44(2) for dismissals.

If the department has not granted or denied a filed refund claim within six months of filing the claim, the refund claimant may file a protest. Even though a protest is so filed, the department is entitled to examine and inspect the refund claimant's records to verify the refund claim.

Notwithstanding the above, the taxpayer who fails to timely protest an assessment may contest the assessment by paying the whole assessed tax, interest, and penalty and by filing a refund claim within the time period provided by law for filing such claim. However, in the event that such assessment involves divisible taxes, which are not timely protested, namely, an assessment which is divisible into a tax on each transaction or event, the taxpayer can contest the assessment by paying a portion of the assessment and filing a refund claim within the time period provided by law. In this latter instance, the portion paid must represent any undisputed portion of the assessment and must also represent the liability on a transaction or event for which, if the taxpayer is successful in contesting the portion paid, the unpaid portion of the assessment would be canceled. *Flora v. United States,* 362 U.S. 145, 4 L.Ed. 2d 623, 80 S.Ct. 630 (1960); *Higginbotham v. United States,* 556 F.2d 1173 (4th Cir. 1977); *Steele v. United States,* 280 F.2d 89 (8th Cir. 1960); *Stern v. United States,* 563 F.Supp. 484 (D. Nev. 1983); *Drake v. United States,* 355 F. Supp. 710 (E.D. Mo. 1973). Any such protest filed is limited to the issues covered by

the amounts paid for which a refund was requested and denied by the department. Thereafter, if the department does not grant or deny the refund within six months of the filing of the refund claim or if the department denies the refund, the taxpayer may file a protest as authorized by this rule.

All of the taxes administered and collected by the department can be divisible taxes, except individual income tax, fiduciary income tax, corporation income tax, franchise tax, and statewide property tax. The following noninclusive examples illustrate the application of the divisible tax concept.

EXAMPLE A. X is assessed withholding income taxes, penalty and interest, as a responsible party on eight employees. X fails to timely protest the assessment. X contends that X is not a responsible party. If X is a responsible party, X was required to make monthly deposits of the withholding taxes. In this situation, the withholding taxes are divisible. Therefore, X can pay an amount of tax, penalty and interest attributable to one employee for one month and file a refund claim within the time period provided by law since if X is successful on the refund claim the remaining unpaid portion of the assessment would be canceled.

EXAMPLE B. Y is assessed sales tax, interest, and penalty for electricity purchased and used to power a piece of machinery in Y's manufacturing plant. Y fails to timely protest the assessment. Y was billed monthly for electricity by the power company to whom Y had given an exemption certificate. Y contends that the particular piece of machinery is used directly in processing tangible personal property for sale and that, therefore, all of the electricity is exempt from sales tax. In this situation, the sales tax is divisible. Therefore, Y can pay an amount of tax, penalty and interest attributable to one month's electrical usage in that machinery and file a refund claim within the time period provided by law since if Y is successful on the refund claim the remaining unpaid portion of the assessment would be canceled.

The protest shall be brought by and in the name of the interested or affected person or by and in the full descriptive name of the fiduciary legally entitled to institute a proceeding on behalf of the person or by an intervenor in contested case proceedings. In the event of a variance in the name set forth in the protest and the correct name, a statement of the reason for the discrepancy shall be set forth in the protest. A protest which is filed shall contain:

7.41(1) A caption in the following form:

BEFORE THE DEPARTMENT OF REVENUE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF _____ (state taxpayer's name and address and designate type of proceeding, e.g., income tax refund claim).	PROTEST DOCKET NO._____ (filled in by department)

7.41(2) Substantially state in separate numbered paragraphs the following:

a. Proper allegations showing:

(1) Date of assessment;

(2) Date of refund denial;

(3) Whether the protester failed to timely appeal the assessment and, if so, the date of payment and the date of filing the refund claim;

(4) Whether the protest involves the appeal of a refund claim after six months from the date of filing the refund claim because the department failed to deny the claim;

(5) Attach a copy of the assessment, refund claim, and refund denial;

(6) Other items that the protester wishes to bring to the attention of the department; and

(7) Request for attorney fees, if applicable.

b. The type of tax, the taxable period or periods involved and the amount in controversy;

c. Each error alleged to have been committed listed in a separate paragraph. For each error listed, provide an explanation of the error and all relevant facts related to the error;

d. Reference to any particular statute or statutes and any rule or rules involved, if known;

e. Description of records or documents which were not available or were not presented to department personnel prior to the filing of the protest, if any, and provide copies of any records or documents that were not previously presented to the department;

f. Any other matters deemed relevant and not covered in the above paragraphs;

g. The desire of protester to waive informal or contested case proceedings if it is desired; unless the protester so indicates a waiver, informal procedures will be initiated;

h. A statement setting forth the relief sought by the protester;

i. The signature of the protester or that of the protester's representative, the addresses of the protester and of the protester's representative, and the telephone number of the protester or the protester's representative; and

j. Attach a copy of power of attorney for protester's representative.

Upon receipt of the protest, the clerk of the hearings section for the department shall register the receipt of the protest, docket the protest, and shall assign a number to the case. The assigned number shall be placed on all subsequent pleadings filed in the case. An original and two copies of the protest shall be filed with the clerk of the hearings section of the department.

The protester may amend the protest at any time prior to the commencement of the evidentiary hearing. The department can request that protester amend the protest for purposes of clarification.

Upon the filing of an answer or if a demand for contested case is made by the protester, the clerk of the hearings section of the department will transfer the protest file to the division of administrative hearings established by 1998 Iowa Acts, chapter 1202, section 3, within 30 days of the date of the filing of the answer or the demand for contested case, unless the director determines not to transfer the case. If a party objects to a determination under 701—7.50(17A), the transfer, if any, would be made after the director makes a ruling on the objection.

7.41(3) Denial of renewal of vehicle registration or denial of issuance or renewal, or suspension, of a driver's license. A person who has had an application for renewal of vehicle registration denied or has been denied the issuance of a driver's license or the renewal of a driver's license, or has had a driver's license suspended may file a protest with the clerk of the hearings section for the department if the denial of the issuance or renewal or the suspension is because the person owes delinquent taxes.

The issues raised in a protest by the person, which are limited to a mistake of fact, may include but are not limited to:

1. The person has the same name as the obligor but is not the correct person;
2. The amount in question has been paid; or
3. The person has made arrangements with the department to pay the amount.

701—7.42(17A) Identifying details. Any person may file a motion to delete identifying details concerning the person from any document relating to any proceedings as defined in rule 701—7.37(17A) prior to disclosure to members of the public. Such a motion must be filed with the clerk of the hearings section for the department if the motion is filed prior to the commencement of a contested case, which is before the Notice for Hearing is issued. If the motion is filed during a contested case proceeding pending before an administrative law judge and before the administrative law judge has entered a proposed decision on the case or has entered a closing order, the motion must be filed with and ruled upon by the administrative law judge. Otherwise, the motion must be filed with the clerk of the hearings section and ruled upon by the director. The motion shall be filed simultaneously with the presentation of the privacy or trade secret information under circumstances whereby the information may be disclosed to the public and before the issuance of any opinion, order or decision.

If the motion concerns information which is not a part of a contested case, the motion shall be in the form of a request to delete identifying details; if part of a contested case, the motion shall be in the form of a motion to delete identifying details. All motions to delete shall conform to subrule 7.50(4). The motion or request shall contain the following:

1. The name of the person requesting deletion and the docket number of the proceeding, if applicable;

2. The legal basis for the request for deletion, which is either that the material would be a clearly unwarranted invasion of personal privacy or the material is a trade secret. A corporation may not claim an unwarranted invasion of privacy;

3. A precise description of the document, report, or other material in the possession of the department from which the deletion is sought, and a precise description of the information to be deleted. If deletion is sought from more than one document, each document and the materials sought to be deleted from it shall be listed in separate paragraphs. Also contained in each separate paragraph shall be a statement of the legal basis for the deletion requested in that paragraph, which is that the material sought to be deleted is a clearly unwarranted invasion of privacy or is a trade secret and the material serves no public purpose;

4. An affidavit in support of deletion must accompany each motion or request. The affidavit must be sworn to by a person familiar with the facts asserted within it and shall contain a clear and concise explanation of the facts justifying deletion, not merely the legal basis for deletion or conclusionary allegations;

5. All affidavits shall contain a general and truthful statement that the information sought to be deleted is not available to the public from any source or combination of sources, direct or indirect, and a general statement that the release would serve no public purpose;

6. The burden of showing that deletion is justified shall be on the movant. The burden is not carried by mere conclusionary statements or allegations, for example, that the release of the material would be a clearly unwarranted invasion of personal privacy or that the material is a trade secret;

7. In the event that the matter sought to be deleted is part of the pleadings, motions, evidence, and the record in a contested case proceeding otherwise open for public inspection, and that the matter would otherwise constitute confidential tax information shall not be grounds for deletion (1992 Op.Att'y Gen.1.); and

8. The ruling on the motion shall be strictly limited to the facts and legal bases presented by the movant, and the ruling shall not be based upon any facts or legal bases not presented by the movant.

701—7.43(17A) Docket. The clerk of the hearings section for the department shall maintain a docket of all proceedings, and each of the proceedings shall be assigned a number. Every matter coming within the purview of these rules shall be assigned a docket number which shall be the official number for the purposes of identification. Upon receipt of a protest, petition for declaratory order or petition to initiate rule-making proceedings, the proceeding will be docketed and assigned a number, and the parties notified thereof. The number shall be placed by the parties on all papers thereafter filed in the proceeding. After the transfer of a case to the division of administrative hearings for contested case proceedings, that division may assign a docket number to the case and in that event, the docket number shall be placed by the parties on all papers thereafter filed in the proceeding.

701—7.44(17A) Informal procedures and dismissals of protests.

7.44(1) *Informal procedures.* Persons are encouraged to utilize the informal procedures provided herein so that a settlement may be reached between the parties without the necessity of initiating contested case proceedings. Therefore, unless the protester indicates a desire to waive the informal procedures in the protest or the department waives informal procedures upon notification to the protester, such informal procedures will be initiated as herein provided upon the filing of a proper protest.

a. *Review unit.* A review unit is created within the department and, subject to the control of the director, the unit will:

(1) Review and evaluate the validity of all protests made by taxpayers from the department action.

(2) Determine the correct amount of tax owing or refund due.

(3) Determine the best method of resolving the dispute between the protester and the department.

(4) Take further action regarding the protest, including any additions and deletions to the audit, as may be warranted by the circumstances to resolve the protest, including a request for an informal conference.

(5) Determine whether the protest complies with rule 701—7.41(17A) and request any amendments to the protest or additional information.

The review unit may concede any items contained in the protest which it determines should not be controverted by the department. If the protester has not waived informal procedures, the review unit may request the protester and the protester's representative, if any, to attend an informal conference with the review unit to explore the possibility of reaching a settlement without the necessity of initiating contested case proceedings or of narrowing the issues presented in the protest if no settlement can be made. The review unit may request clarification of the issues from the protester or further information from the protester or third persons.

Findings dealing with the issues raised in the protest may be issued unless the issues may be more expeditiously determined in another manner or it is determined that findings are unnecessary. The protester will be notified of the decision on the issues in controversy.

Nothing herein will prevent the review unit and the protester from mutually agreeing on the manner in which the protest will be informally reviewed.

b. *Settlements.* If a settlement is reached during informal procedures, the clerk of the hearings section must be notified. A closing order shall be issued by the director and served upon all parties, stating that a settlement was reached by the parties and that the case is terminated.

7.44(2) *Dismissal of protests.*

a. Whether informal procedures have been waived or not, the failure of the protester to timely file a protest or to pursue the protest may be grounds for dismissal of the protest by the director or the director's designee. If the protest is so dismissed, the protester may file an application for reinstatement of the protest for good cause as provided in paragraph *"c"* of this subrule. Such application must be filed within 30 days of the date of the dismissal notice. Thereafter, the procedure in paragraph *"c"* of the subrule should be followed. If informal procedures have not been waived, the failure of the protester to present evidence or information requested by the review unit shall constitute grounds for the director or the director's designee to dismiss the protest. For purposes of this subrule, an evasive or incomplete response will be treated as a failure to present evidence or information. The failure of protester to file a protest in the format required by rule 7.41(17A) may be grounds for dismissal of the protest by the director or the director's designee.

b. If the department seeks to have the protest dismissed, the review unit shall file a motion to dismiss with the clerk of the hearings section for the department and serve a copy of the motion on the protester. Protester may file a resistance to the motion within 20 days of the date of service of the motion. If no resistance is so filed, the director or the director's designee shall immediately enter an order dismissing the protest. If a resistance is filed, the review unit has ten days from the date of the filing of the resistance to decide whether to withdraw its motion and so notify the clerk of the hearings section for the department and protester. If no such notice is issued by the review unit within the ten-day period, the protest file will be transferred to the division of administrative hearings, which shall issue a notice for a contested case proceeding on the motion as prescribed by rule 7.47(17A), except that the issue of the contested case proceeding shall be limited to the question of whether the protest shall be dismissed. Thereafter, the rules of the department pertaining to contested case proceedings shall apply in such dismissal proceedings.

c. If a motion to dismiss is filed and is unresisted, a protest so dismissed may be reinstated by the director or the director's designee for good cause as interpreted by the Iowa Supreme Court in the case of *Purethane, Inc. v. Iowa State Board of Tax Review,* 498 N.W.2d 706 (Iowa 1993) if an application for reinstatement is filed with the clerk of the hearings section for the department within 30 days of the date the protest was dismissed. The application shall set forth all reasons and facts upon which the protester relies in seeking reinstatement of the protest. The review unit shall review the application and notify the protester whether the application is granted or denied. If the review unit denies the application to reinstate the protest, the protester has 30 days from the date the application for reinstatement was denied in which to request, in writing, a formal hearing on the reinstatement. When a written request is received, the protest file will be transferred to the division of administrative hearings which shall issue a notice as prescribed in rule 701—7.47(17A), except that the issue of the contested case proceeding shall be

limited to the question of whether the protest shall be reinstated. Thereafter, the rules of the department pertaining to contested case proceedings shall apply in such reinstatement proceedings.

d. Once contested case proceedings have been commenced, whether informal proceedings have been waived or not, it shall be grounds for a motion to dismiss that a protester has either failed to diligently pursue the protest or refuses to comply with requests for discovery set forth in rule 701—7.47(17A). Such a motion must be filed with the presiding officer.

e. Notwithstanding other provisions of this subrule, if the director finds that a protest is not timely filed, including a failure within a reasonable time to file a protest in proper form after notice to protester by the hearings section, the director, without the filing of a motion to dismiss, may dismiss the protest and shall notify the protester that the protest has been dismissed. With respect to a protest so dismissed, thereafter the provisions of paragraph *"c"* of this subrule shall apply.

701—7.45(17A) Answer. The department may, in lieu of findings, file an answer. When findings are issued, the department will file an answer within 30 days of receipt of written notification from protester stating disagreement with the findings. The answer shall be filed with the clerk of the hearings section for the department.

In the event that the protester does not so respond in writing to the findings issued on matters covered by subrule 7.44(1) within 30 days after being notified, the department may seek dismissal of the protest pursuant to subrule 7.44(2).

The answer of the department shall be drawn in a manner as provided by the Iowa Rules of Civil Procedure for answers filed in Iowa district courts.

Each paragraph contained in the answer shall be numbered or lettered to correspond, where possible, with the paragraphs of the protest. An original copy only of the answer shall be filed with the clerk of the hearings section for the department and shall be signed by the department's counsel or representative.

The department shall forthwith serve a copy of the answer upon the representative of record or, if there is no representative of record, then upon the protester and shall file proof of service with the clerk of the hearings section of the department at the time of filing of the answer. The department may amend its answer at any time prior to the commencement of the evidentiary hearing.

The provisions of rule 701—7.45(17A) shall be considered as a part of the informal procedures since a contested case proceeding, at the time of filing the answer, has not yet commenced. However, an answer shall be filed pursuant to this rule whether or not informal procedures have been waived by the protester or the department.

Notwithstanding the above portions of this rule, if a taxpayer makes a written demand for a contested case proceeding, as authorized by rule 701—7.47(17A), after a period of six months from the filing of a proper protest, the department shall file its answer within 30 days after receipt of the demand. If the department fails to file its answer within this 30-day period, interest shall be suspended, if the protest involves an assessment, from the time that the department was required to answer until the date that the department files its answer and, if the protest involves a refund, interest shall accrue on the refund at double the rate from the time the department was required to answer until the date that the department files its answer.

The department's answer may contain a statement setting forth whether the case should be transferred to the division of administrative hearings or the director should retain the case for hearing.

The department's answer should set forth the basis for retention of the case by the director as provided in subrule 7.50(1). If the answer fails to allege that the case should be retained by the director, the case should be transferred to the division of administrative hearings for contested case proceedings, unless the director determines on the director's own motion that the case should be retained by the director.

This rule is intended to implement Iowa Code chapter 17A and Iowa Code sections 421.14 and 421.60.

701—7.46(17A) Subpoenas. Prior to the commencement of a contested case, the department shall have the authority to subpoena books, papers, and records and shall have all other subpoena powers conferred

upon it by law. Subpoenas in this case shall be issued by the director or the director's designee. Once a contested case is commenced, subpoenas must be issued by the presiding officer.

This rule is intended to implement Iowa Code chapter 17A and Iowa Code section 421.14.

701—7.47(17A) Commencement of contested case proceedings. A demand or request by the protester for the commencement of contested case proceedings must be in writing and filed with the clerk of the hearings section by electronic means, by mail via the United States Postal Service or common carrier by ordinary, certified, or registered mail in care of the clerk of the hearings section of the department, or by personal service on the office of the clerk of the hearings section for the department during business hours. The demand or request is considered filed on the date of the postmark. If the demand or request does not indicate a postmark date, then the date of receipt or the date personal service is made is considered the date of filing. See Iowa Code section 622.105 for the evidence necessary to establish proof of mailing.

At the request of a party or the presiding officer made prior to the issuance of the hearing notice, the presiding officer shall hold a telephone conference with the parties for the purpose of selecting a mutually agreeable hearing date, which date shall be the hearing date contained in the hearing notice. The notice shall be issued within one week after the mutually agreeable hearing date is selected.

Contested case proceedings will be commenced by the presiding officer by delivery of notice by ordinary mail directed to the parties after a demand or request is made (1) by the protester and the filing of the answer, if one is required, which demand or request may include a date to be set for the hearing, or (2) upon filing of the answer, if a request or demand for contested case proceedings has not been made by the protester. The notice will be given by the presiding officer.

The presiding officer may grant a continuance of the hearing. Any change in the date of the hearing shall be set by the presiding officer. Either party may apply to the presiding officer for a specific date for the hearing. The notice shall include:

1. A statement of the time (which shall allow for a reasonable time to conduct discovery), place and nature of the hearing;
2. A statement of the legal authority and jurisdiction under which the hearing is held;
3. A reference to the particular sections of the statutes and rules involved; and
4. A short and plain statement of the matters asserted, including the issues.

After the delivery of the notice commencing the contested case proceedings, the parties may file further pleadings or amendments to pleadings as they desire. However, any pleading or amendment thereto which is filed within seven days prior to the date scheduled for the hearing or filed on the date of the hearing shall constitute good cause for the party adversely affected by the pleading or amendment to seek and obtain a continuance.

This rule is intended to implement Iowa Code sections 17A.12 and 421.8A.

701—7.48(17A) Discovery. The rules of the Supreme Court of the state of Iowa applicable in civil proceedings with respect to depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission shall apply to discovery procedures in contested case proceedings. Disputes concerning discovery shall be resolved by the presiding officer. If necessary a hearing shall be scheduled, with reasonable notice to the parties and upon hearing an appropriate order shall be issued by the presiding officer.

When the department relies on a witness in a contested case, whether or not a departmental employee, who has made prior statements or reports with respect to the subject matter of the witness' testimony, it shall, on request, make such statements or reports available to a party for use on cross-examination, unless those statements or reports are otherwise expressly exempt from disclosure by constitution or statute. Identifiable departmental records that are relevant to disputed material facts involved in a contested case shall, upon request, promptly be made available to the party unless the requested records are expressly exempt from disclosure by constitution or statute.

Evidence obtained in such discovery may be used in contested case proceedings if that evidence would otherwise be admissible in the contested case proceeding.

This rule is intended to implement Iowa Code chapter 17A and Iowa Code section 421.14.

701—7.49(17A) Prehearing conference. Upon the motion of the presiding officer, or upon the written request of a party, the presiding officer shall direct the parties to appear at a specified time and place before the presiding officer for a prehearing conference to consider:

1. The possibility or desirability of waiving any provisions of the Act relating to contested case proceedings by written stipulation representing an informed mutual consent;
2. The necessity or desirability of setting a new date for hearing;
3. The simplification of issues;
4. The necessity or desirability of amending the pleadings either for the purpose of clarification, amplification or limitation;
5. The possibility of agreeing to the admission of facts, documents or records not really controverted, to avoid unnecessary introduction of proof;
6. The procedure at the hearing;
7. Limiting the number of witnesses;
8. The names and identification of witnesses and the facts each party will attempt to prove at the hearing;
9. Conduct or schedule of discovery; and
10. Such other matters as may aid, expedite or simplify in the disposition of the proceeding.

Any action taken at the prehearing conference shall be recorded in an appropriate order, unless the parties enter upon a written stipulation as to such matters or agree to a statement thereof made on the record by the presiding officer.

When an order is issued at the termination of the prehearing conference, a reasonable time shall be allowed to the parties to present objections on the grounds that it does not fully or correctly embody the agreements at such conference. Thereafter, the terms of the order or modification thereof shall determine the subsequent course of the proceedings relative to matters it includes, unless modified to prevent manifest injustice.

If either party to the contested case proceeding fails to appear at the prehearing conference, fails to request a continuance, or fails to submit evidence or arguments which the party wishes to be considered in lieu of appearance, the opposing party may move for dismissal. The motion shall be made in accordance with subrule 7.50(4).

This rule is intended to implement Iowa Code section 17A.12.

701—7.50(17A) Contested case proceedings. Unless the parties to a contested case proceeding have, by written stipulation representing an informed mutual consent, waived the provisions of the Act relating to such proceedings, contested case proceedings shall be initiated and culminate in an evidentiary hearing open to the public.

Evidentiary hearings in which the presiding officer is an administrative law judge employed by the division of administrative hearings, shall be held at the location designated in the notice of evidentiary hearing. Generally, the location for evidentiary hearings in such cases will be at the principal office of the Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319.

If the director retains a contested case, generally, the location for the evidentiary hearing will be at the main office of the department at the Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50309. However, the department retains the discretion to change the location of the evidentiary hearing if necessary. The location of the evidentiary hearing will be designated in the notice of hearing issued by the director.

7.50(1) *Determination of presiding officer.* If the director retains a contested case for evidentiary hearing and the department is a party, the initial presiding officer will be the director. If the department is not a party to the contested case retained by the director, the presiding officer may be the director or the director's designee. Upon determining that a case will be retained and not transferred to the division

of administrative hearings, the director shall issue written notification to the parties of the determination which states the basis for retaining the case for evidentiary hearing.

The director may determine to retain a contested case for evidentiary hearing and decision upon the filing by the department of its answer under rule 701—7.45(17A). If the answer failed to allege that the case should be retained by the director and the case was transferred to the division of administrative hearings for contested case proceedings, either party may, within a reasonable time after the issuance of the hearing notice provided in rule 701—7.47(17A), make application to the director to recall and retain the case for hearing and decision. Any such application shall be served upon the assigned administrative law judge or presiding officer.

A protester may file a written objection to the director's determination to retain the case for evidentiary hearing and request that the contested case be heard by an administrative law judge or presiding officer and request a hearing on the objection. Such an objection must be filed with the clerk of the hearings section for the department within 20 days of the notice issued by the director of the director's determination to retain the case. The director may retain the case only upon a finding that one or more of the following apply:

a. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety and welfare;

b. A qualified administrative law judge is unavailable to hear the case within a reasonable time;

c. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented;

d. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues;

e. The case involves an issue or issues the resolution of which would create important precedent;

f. The case involves complex or extraordinary questions of law or fact;

g. The case involves issues or questions of law or fact that, based on the director's discretion, should be retained by the director;

h. Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal;

i. The request was not timely filed;

j. The request is not consistent with a specified statute; and

k. An assignment of the administrative law judge will result in lengthening the time for issuance of a proposed decision, after the case is submitted, beyond a reasonable time as provided in subrule 7.50(7). In making this determination, the director shall consider whether the assigned administrative law judge has a current backlog of submitted cases for which decisions have not been issued for one year after submission.

The director shall issue a written ruling specifying the grounds for the decision within 20 days after a request for an administrative law judge is filed. If a party objects to the director's determination to retain a case for evidentiary hearing, transfer of the protest file, if any, will be made after the director makes a final determination on the objection. If the ruling is contingent upon the availability of a qualified administrative law judge, the parties shall be notified at least ten days prior to the hearing if a qualified administrative law judge will be available.

If there is no factual conflict or credibility of evidence offered in issue, either party, after the contested case has been heard and a proposed decision is pending with a presiding officer other than the director for at least one year, may make application to the director to transfer the case to the director for decision. In addition, if the aforementioned criteria exist, the director, on the director's own motion, may issue a notice to the parties of the director's intention to transfer the case to the director for decision. The opposing party may file, within 20 days after service of such application or notice by the director, a resistance setting forth in detail why the case should not be transferred. If the director approves the transfer of the case, the director shall issue a final contested case decision. The director or a party may request that the parties be allowed to submit proposed findings of fact and conclusions of law.

The director has the right to require that any presiding officer, other than the director, be a licensed attorney in the state of Iowa, unless the contested case only involves licensing. In addition, any presiding officer must possess, upon determination by the director, sufficient technical expertise and experience in

the areas of taxation and presiding over proceedings to effectively determine the issues involved in the proceeding.

Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the director.

7.50(2) *Conduct of proceedings.* A proceeding shall be conducted by a presiding officer who, among other things, shall:

a. Open the record and receive appearances;
b. Administer oaths and issue subpoenas;
c. Enter the notice of hearing into the record;
d. Receive testimony and exhibits presented by the parties;
e. In the presiding officer's discretion, interrogate witnesses;
f. Rule on objections and motions;
g. Close the hearing; and
h. Issue an order containing findings of fact and conclusions of law.

The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearing. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen. Parties shall be notified at least 30 days in advance of the date and place of the hearing.

Evidentiary proceedings shall be oral and open to the public and shall be recorded either by mechanical means or by certified shorthand reporters. Parties requesting that the hearing be recorded by certified shorthand reporters shall bear the appropriate costs. The record of the oral proceedings or the transcription thereof, shall be filed with and maintained by the department for at least five years from the date of the decision. An opportunity shall be afforded to the parties to respond and present evidence and argument on all issues involved and to be represented by counsel at their own expense. Unless otherwise directed by the presiding officer, evidence will be received in the following order: (1) protester, (2) intervenor (if applicable), (3) department, (4) rebuttal by protester, (5) oral argument by parties (if necessary).

If the protester or the department appears without counsel or other representative who can reasonably be expected to be familiar with these rules, the presiding officer shall explain to the parties the rules of practice and procedure and generally conduct a hearing in a less formal manner than that used when the parties have such representatives appearing upon their behalf. It should be the purpose of the presiding officer to assist any party appearing without such representative to the extent necessary to allow the party to fairly present evidence, testimony, and arguments on the issues. The presiding officer shall take whatever steps may be necessary and proper to ensure that all evidence having probative value is presented and that each party is accorded a fair hearing.

If the parties have mutually agreed to waive the provisions of the Act in regard to contested case proceedings, the hearing will be conducted in a less formal manner than when an evidentiary hearing is conducted.

If a party fails to appear in a contested case proceeding after proper service of notice, the presiding officer may, upon the presiding officer's own motion or upon the motion of the party who has appeared, adjourn the hearing, enter a default decision, or proceed with the hearing and make a decision on the merits in the absence of the party.

Contemptuous conduct by any person appearing at a hearing shall be grounds for the person's exclusion from the hearing by the presiding officer.

A stipulation by the parties of the issues or a statement of the issues in the notice commencing the contested case cannot be changed by the presiding officer without the consent of the parties. The presiding officer shall not, on the presiding officer's own motion, change or modify the issues agreed upon by the parties. Notwithstanding the provisions of this paragraph, a party within a reasonable time prior to the hearing may request that a new issue be addressed in the proceedings, except that the request cannot be made after the parties have stipulated to the issues.

7.50(3) *Rules of evidence.* In evaluating evidence, the department's experience, technical competence, and specialized knowledge may be utilized.

a. Oath. All testimony presented before the presiding officer shall be given under oath which the presiding officer has authority to administer.

b. Production of evidence and testimony. The presiding officer may issue subpoenas to a party on request, as permitted by law, compelling the attendance of witnesses and the production of books, papers, records, or other real evidence.

c. Subpoena. When a subpoena is desired after the commencement of a contested case proceeding, the proper party shall indicate to the presiding officer the name of the case, the docket number and the last-known addresses of the witnesses to be called. If evidence other than oral testimony is required, each item to be produced must be adequately described. When properly prepared by the presiding officer, the subpoena will be returned to the requesting party for service. Service may be made in any manner allowed by law before the hearing date of the case which the witness is required to attend. No costs for serving a subpoena will be allowed if it is served by any person other than the sheriff. Subpoenas requested for discovery purposes shall be issued by the presiding officer.

d. Admissibility of evidence.

(1) Evidence having probative value. Although the presiding officer is not bound to follow the technical common law rules of evidence, a finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial. Therefore, the presiding officer may admit and give probative effect to evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The presiding officer shall give effect to the rules of privilege recognized by law. Evidence not provided to a requesting party through discovery shall not be admissible at the hearing. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced, substantially any part of the evidence may be required to be submitted in verified written form by the presiding officer.

Objections to evidentiary offers may be made at the hearing and the presiding officer's ruling thereon shall be noted in the record.

(2) Evidence of a federal determination. Evidence of a federal determination whether it be a treasury department ruling, regulation or determination letter, a federal court decision or an Internal Revenue Service assessment relating to issues raised in the proceeding shall be admissible, and the protester shall be presumed to have conceded the accuracy of it unless the protester specifically states wherein it is erroneous.

(3) Copies of evidence. A copy of any book, record, paper or document may be offered directly in evidence in lieu of the original, if the original is not readily available or if there is no objection. Upon request, the parties shall be given an opportunity to compare the copy with the original, if available.

(4) Stipulations. Approval of the presiding officer is not required for stipulations of the parties to be used in contested case proceedings. In the event the parties file a stipulation in the proceedings, the stipulation shall be binding on the parties and the presiding officer.

e. Exhibits.

(1) Identification of exhibits. Exhibits attached to a stipulation or entered in evidence which are offered by protesters shall be numbered serially, i.e., 1, 2, 3, etc.; whereas, those offered by the department shall be lettered serially, i.e., A, B, C, etc.; and those offered jointly shall be numbered and lettered, i.e., 1-A, 2-B, 3-C, etc.

(2) Disposition of exhibits. After an order has become final, either party desiring the return, at the party's expense, of any exhibit belonging to the party, shall make application in writing to the clerk of the hearings section for the department within 30 days suggesting a practical manner of delivery; otherwise, exhibits may be disposed of as the clerk of the hearings section for the department deems advisable.

f. Official notice. The presiding officer may take official notice of all facts of which judicial notice may be taken. Parties shall be notified at the earliest practicable time, either before or during the hearing, or by reference in preliminary reports, preliminary decisions or otherwise, of the facts proposed to

be noticed and their source, including any staff memoranda or data. The parties shall be afforded an opportunity to contest such facts prior to the issuance of the decision in the contested case proceeding unless the presiding officer determines as a part of the record or decision that fairness to the parties does not require an opportunity to contest such facts.

g. *Evidence outside the record.* Except as provided by these rules, the presiding officer shall not consider factual information or evidence in the determination of any proceeding unless the same shall have been offered and made a part of the record in the proceeding.

h. *Presentation of evidence and testimony.* In any hearing each party thereto shall have the right to present evidence and testimony of witnesses and to cross-examine any witness who testifies on behalf of an adverse party. Persons whose testimony has been submitted in written form, if available, shall also be subject to cross-examination by an adverse party. Opportunity shall be afforded each party for re-direct examination and re-cross examination and to present evidence and testimony as rebuttal to evidence presented by another party, except that unduly repetitious evidence shall be excluded.

i. *Offer of proof.* An offer of proof may be made through the witness or by statement of counsel. The party objecting may cross-examine the witness without waiving any objection.

7.50(4) *Motions.* After commencement of contested case proceedings, appropriate motions may be filed by any party with the presiding officer when facts requiring such motion come to the knowledge of the party. All motions shall state the relief sought and the grounds upon which the same are based.

Motions made prior to a hearing shall be in writing and a copy thereof served on all parties and attorneys of record. Such motions shall be ruled on by the presiding officer. The presiding officer shall rule on the motion by issuing an order. A copy of the order containing the ruling on the motion shall be mailed to the parties and authorized representatives. Motions may be made orally during the course of a hearing; however, the presiding officer may request that it be reduced to writing and filed with the presiding officer.

To avoid a hearing on a motion, it is advisable to secure the consent of the opposing party prior to filing the motion. If consent of the opposing party to the motion is not obtained, a hearing on the motion may be scheduled and the parties notified. The burden will be on the party filing the motion to show good cause why the motion should be granted.

The party making the motion may affix thereto such affidavits as are deemed essential to the disposition of the motion, which shall be served with the motion and to which the opposing party may reply with counter affidavits.

a. *Types of motions.* Types of motions include, but are not limited to:

(1) Motion for continuance. Motions for continuance should be filed no later than ten days before the scheduled date of the contested case hearing unless the grounds for the motion are first known to the moving party within ten days of the hearing, in which case the motion shall be promptly filed and shall set forth why it could not be filed at least ten days prior to the hearing. Grounds for motion for continuance include, but are not limited to, the following:

1. Unavailability of a party, a party's representative or a witness;
2. Incompletion of discovery; and
3. Possibility of settlement of the case.

(2) Motion for dismissal;

(3) Motion for summary judgment;

(4) Motion to delete identifying details in the decision;

(5) Motion for default; and

(6) Motion to vacate default.

b. *Hearing on motions.* Motions subsequent to the commencement of a contested case proceeding shall be determined by the presiding officer.

c. *Summary judgment procedure.* Summary judgment may be obtained under the following conditions and circumstances:

(1) A party may, after a reasonable time to complete discovery, after completion of discovery, or by agreement of the parties, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part of a party's claim or defense.

(2) The motion shall be filed not less than 45 days prior to the date the case is set for hearing, unless otherwise ordered by the presiding officer. Any party resisting the motion shall file within 30 days from the time of service of the motion a resistance; statement of disputed facts, if any; and memorandum of authorities supporting the resistance. If affidavits supporting the resistance are filed, they must be filed with the resistance. The time fixed for hearing or normal submission on the motion shall be not less than 35 days after the filing of the motion, unless another time is ordered by the presiding officer. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

(3) Upon any motion for summary judgment pursuant to this rule, there shall be affixed to the motion a separate, short, and concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried, including specific reference to those parts of the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits which support such contentions and a memorandum of authorities.

(4) Supporting and opposing affidavits shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. The presiding officer may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, further affidavits, or oral testimony. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party's pleading, but the party's response must set forth specific facts, by affidavits or as otherwise provided in this rule, showing that there is a genuine issue for hearing. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party.

(5) If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a hearing is necessary, the presiding officer at the hearing of the motion, by examining the pleadings and the evidence before the presiding officer and by interrogating counsel, shall, if practicable, ascertain what material facts exist without substantial controversy and what material facts are actually, and in good faith, controverted. The presiding officer shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the hearing of the contested case, the facts so specified shall be deemed established, and the hearing shall be conducted accordingly.

(6) Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present, by affidavit, facts essential to justify the party's opposition, the presiding officer may refuse the application for judgment, may order a continuance to permit affidavits to be obtained, may order depositions be taken or discovery be completed, or may make any other order appropriate.

(7) An order on summary judgment that disposes of less than the entire case is appealable to the director at the same time that the proposed order is appealable pursuant to subrule 7.50(7).

7.50(5) *Briefs and oral argument.* At any time, upon the request of any party or in the presiding officer's discretion, the presiding officer may require the filing of briefs on any of the issues before the presiding officer prior to or at the time of hearing, or at a subsequent time. At the hearing, the parties should be prepared to make oral arguments as to the facts and law at the conclusion of the hearing if the presiding officer so directs.

An original copy only of all briefs shall be filed. Filed briefs shall conform to the requirements of 701—7.5(17A).

If the parties agree on a schedule for submission of briefs, the schedule shall be binding on the parties and the presiding officer except that, for good cause shown, the time may be extended upon application of a party.

7.50(6) *Defaults.* If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

a. Where appropriate and not contrary to law, any party may move for default against a party who has failed to file a required pleading or has failed to appear after proper service.

b. A default decision or a decision rendered on the merits after a party failed to appear or participate in a contested case proceeding becomes a final department action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided in subrule 7.50(7). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, and such affidavit(s) must be attached to the motion.

c. The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

d. Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

e. "Good cause" for purposes of this rule shall have the same meaning as "good cause" as interpreted in the case of *Purethane, Inc. v. Iowa State Board of Tax Review,* 498 N.W.2d 706 (Iowa 1993).

f. A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party as provided in subrule 7.50(12).

g. If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

h. A default decision may award any relief consistent with the request for relief by the party in whose favor the default decision is made and embraced in the contested case issues; but unless the defaulting party has appeared, it cannot exceed the relief demanded.

i. A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for a stay.

7.50(7) *Orders.* At the conclusion of the hearing, the presiding officer in the presiding officer's discretion, may request the parties to submit proposed findings of fact and conclusions of law. Upon the request of any party, the presiding officer shall allow the parties an opportunity to submit proposed findings of fact and conclusions of law. In addition to or in lieu of the filing of briefs, upon the request of all of the parties waiving any contrary contested case provisions of law or of these rules, the presiding officer shall allow the parties to submit proposed findings of fact and conclusions of law and the presiding officer may sign and adopt as the decision or proposed decision one of such proposed findings of fact and conclusions of law without any changes.

The decision in a contested case is an order which shall be in writing or stated in the record. The order shall include findings of fact prepared by the person presiding at the hearing, unless the person is unavailable, and based solely on the evidence in the record and on matters officially noticed in the record, and shall include conclusions of law. The findings of fact and conclusions of law shall be separately stated. If a party has submitted proposed findings of fact, the order shall include a ruling upon each proposed finding. Each conclusion of law shall be supported by cited authority or by a reasoned opinion. The decision must include an explanation of why the relevant evidence in the record supports each material finding of fact. If the issue of reasonable litigation costs was held in abeyance pending the outcome of the substantive issues in the contested case and the proposed order decides substantive issues in favor of protester, the proposed order shall include a notice of time and place for a hearing on the issue of whether reasonable litigation costs shall be awarded and on the issue of the amount of such award, unless the parties agree otherwise. All decisions and orders in a contested case proceeding shall be based solely on the legal bases and arguments presented by the parties. In the event that the presiding officer believes that a legal basis or argument for a decision or order exists, but has not been presented by the parties, the presiding officer shall notify the parties and give them an opportunity to file a brief that addresses such legal basis or argument.

When a motion has been made to delete identifying details in an order on the basis of personal privacy or trade secrets, the justification for such deletion or refusal to delete shall be made by the moving party and shall appear in the order.

When the director initially presides at a hearing or considers decisions on appeal from or review of a proposed decision by the presiding officer other than the director, the order becomes the final order of the department for purposes of judicial review or rehearing unless there is an appeal to or review on motion of a second agency within the time provided by statute or rule. When a presiding officer other than the director presides at the hearing, the order becomes the final order of the department for purposes of judicial review or rehearing unless there is an appeal to or review on motion of the director within 30 days of the date of the order, or 10 days, excluding Saturdays, Sundays, and legal holidays, for a revocation order pursuant to rule 701—7.55(17A). However, if the contested case proceeding involves a question of an award of reasonable litigation costs, the proposed order on the substantive issues shall not be appealable to or reviewable by the director on the director's motion until the issuance of a proposed order on the reasonable litigation costs. If there is no such appeal or review within 30 days or 10 days, whichever is applicable, from the date of the proposed order on reasonable litigation costs, both the proposed order on the substantive issues and the proposed order on the reasonable litigation costs become the final orders of the department for purposes of judicial review or rehearing. On an appeal from, review of, or application for rehearing concerning the presiding officer's order, the director has all the power which the director would initially have had in making the decision; however, the director will only consider those issues or selected issues presented at the hearing before the presiding officer or any issues of fact or law raised independently by the presiding officer, including the propriety of and the authority for raising issues. The parties will be notified of those issues which will be considered by the director.

Notwithstanding the provisions of this rule, where a presiding officer other than the director issues an interlocutory decision or ruling which does not dispose of all the issues, except reasonable litigation costs, in the contested case proceeding, the party adversely affected by the interlocutory decision or ruling may apply to the director within 20 days (10 days for a revocation proceeding) of the date of issuance of the interlocutory decision or ruling to grant an appeal in advance of the proposed decision. The application shall be served on the parties and the presiding officer. The party opposing the application shall file any resistance within 15 days of the service of the application unless, for good cause, the director extends the time for such filing. The director, in the exercise of discretion, may grant the application on finding that such interlocutory decision or ruling involves substantial rights and will materially affect the proposed decision and that a determination of its correctness before hearing on the merits will better serve the interests of justice. The order of the director granting the appeal may be on terms setting forth the course of proceedings on appeal, including advancing the appeal for prompt submission, and the order shall stay further proceedings below. The presiding officer, at the request of the director, shall promptly forward to the director all or a portion of the file or record in the contested case proceeding.

In the event of an appeal to or review of the proposed order by the director, the administrative hearings division shall be promptly notified of the appeal or review by the director. The administrative hearings division shall, upon such notice, promptly forward the record of the contested case proceeding and all other papers associated with the case to the director.

A decision by the director may reverse or modify any finding of fact if a preponderance of the evidence will support a determination to reverse or modify such a finding of fact, or may reverse or modify any conclusion of law that the director finds to be in error.

Orders will be issued within a reasonable time after termination of the hearing. Parties shall be promptly notified of each order by delivery to them of a copy of the order by personal service or certified mail, return receipt requested, except in the case of an order revoking a sales or use tax permit or a motor fuel license which may be delivered by ordinary mail.

A cross-appeal may be taken within the 30-day period for taking an appeal to the director of revenue or in any event within 5 days after the appeal to the director is taken. If a cross-appeal is taken from a revocation order pursuant to rule 701—7.55(17A), the cross-appeal may be taken within the 10-day period for taking an appeal to the director or in any event within 5 days after the appeal to the director is taken.

Upon issuance of a closing order or the proposed decision by a presiding officer other than the director, such presiding officer no longer has jurisdiction over the contested case. Thereafter, any further proceedings associated with or related to the contested case must occur before the director.

7.50(8) *Stays.* During the pendency of judicial review of the final contested case order of the department, the party seeking judicial review may file an application for a stay with the director. The application shall set forth the reasons in detail why the applicant is entitled to a stay and shall specifically address the following four factors:

a. The extent to which the applicant is likely to prevail when the court finally disposes of the matter;

b. The extent to which the applicant will suffer irreparable injury if the stay is not granted;

c. The extent to which the grant of a stay to the applicant will substantially harm the other parties to the proceedings; and

d. The extent to which the public interest relied on by the department is sufficient to justify the department's actions in the circumstances.

The director shall consider and balance the previously mentioned four factors and may consult with department personnel and the department's representatives in the judicial review proceeding. The director shall expeditiously grant or deny the stay.

7.50(9) *Expedited cases—when applicable.* In case a protest is filed where the case is not of precedential value and the parties desire a prompt resolution of the dispute, the department and the protester may agree to have the case designated as an expedited case.

a. *Agreement.* The department and the protester shall execute an agreement to have the case treated as an expedited case. In this case, discovery is waived. The provisions of this agreement shall constitute a waiver of the rights set forth in Iowa Code chapter 17A for contested case proceedings. Within 30 days of written notice to the clerk of the hearings section for the department sent by the parties stating that an agreement to expedite the case has been executed, the clerk of the hearings section for the department must transfer the protest file to the division of administrative hearings.

b. *Finality of decision.* A decision entered in an expedited case proceeding shall not be reviewed by the director, state board of tax review, or any other court, and shall not be treated as a precedent for any other case.

c. *Discontinuance of proceedings.* Any time prior to a decision's being rendered, the taxpayer or the department may request that expedited case proceedings be discontinued if there are reasonable grounds to believe that the issues in dispute would be of precedential value.

d. *Procedure.* Upon return of an executed agreement for this procedure, the department shall within 14 days file its answer to the protest. The case shall be docketed for hearing as promptly as the presiding officer can reasonably hear the matter.

7.50(10) *Burden of proof.* The burden of proof with respect to assessments or denials of refunds in contested case proceedings is as follows:

a. The department must carry the burden of proof by clear and convincing evidence as to the issue of fraud with intent to evade tax.

b. The burden of proof is on the department for any tax periods for which the assessment was not made within six years after the return became due, excluding any extension of time for filing such return, except where the department's assessment is the result of the final disposition of a matter between the taxpayer and the Internal Revenue Service or where the taxpayer and the department signed a waiver of the statute of limitations to assess.

c. The burden of proof is on the department as to any new matter or affirmative defense raised by the department. "New matter" means an adjustment not set forth in the computation of the tax in the assessment or refund denial, as distinguished from a new reason for the assessment or refund denial. "Affirmative defense" is one resting on facts not necessary to support the taxpayer's case.

d. In all instances where the burden of proof is not expressly placed upon the department in this subrule, the burden of proof is upon the protester.

7.50(11) *Costs.* A prevailing taxpayer in a contested case proceeding related to the determination, collection, or refund of a tax, penalty, or interest may be awarded reasonable litigation costs by the

department incurred subsequent to the issuance of the notice of assessment or refund denial based upon the following:

a. The reasonable expenses of expert witnesses.

b. The reasonable costs of studies, reports, and tests.

c. The reasonable fees of independent attorneys or independent accountants retained by the taxpayer. No such award is authorized for accountants or attorneys who represent themselves or who are employees of the taxpayer.

d. An award for reasonable litigation costs shall not exceed $25,000 per case.

e. No award shall be made for any portion of the proceeding which has been unreasonably protracted by the taxpayer.

f. For purposes of this subrule, "prevailing taxpayer" means a taxpayer who establishes that the position of the department in the contested case proceeding was not substantially justified and who has substantially prevailed with respect to the amount in controversy, or has substantially prevailed with respect to the most significant issue or set of issues presented. If the position of the department in issuance of the assessment or refund denial was not substantially justified and if the matter is resolved or conceded before the contested case proceeding is commenced, there cannot be an award for reasonable litigation costs.

g. The definition of "prevailing taxpayer" is taken from the definition of "prevailing party" in 26 U.S.C. §7430. Therefore, federal cases determining whether the Internal Revenue Service's position was substantially justified will be considered in the determination of whether a taxpayer is entitled to an award of reasonable litigation costs to the extent that 26 U.S.C. §7430 is consistent with Iowa Code section 421.60(4).

h. The taxpayer has the burden of establishing the unreasonableness of the department's position.

i. Once a contested case has commenced, a concession by the department of its position or a settlement of the case either prior to the evidentiary hearing or any order issued does not, per se, either authorize an award of reasonable litigation costs or preclude such award.

j. If the department relied upon information provided or action conducted by federal, state, or local officials or law enforcement agencies with respect to the tax imposed by Iowa Code chapter 453B, an award for reasonable litigation costs shall not be made in a contested case proceeding involving the determination, collection, or refund of that tax.

k. The taxpayer who seeks an award of reasonable litigation costs must specifically request such award in the protest or it will not be considered.

l. A request for an award of reasonable litigation costs shall be held in abeyance until the concession or settlement of the contested case proceeding, or the issuance of a proposed order in the contested case proceeding, unless the parties agree otherwise.

m. At the hearing held for the purpose of deciding whether an award for reasonable litigation costs should be awarded, consideration shall be given to the following points:

(1) Whether the department's position was substantially justified;

(2) Whether the protester is the prevailing taxpayer;

(3) The burden is upon protester to establish how the alleged reasonable litigation costs were incurred. This requires a detailed accounting of the nature of each cost, the amount of each cost, and to whom the cost was paid or owed;

(4) Whether alleged litigation costs are reasonable or necessary;

(5) Whether protester has met its burden of demonstrating all of these points.

7.50(12) *Interlocutory appeals.* Upon written request of a party or on the director's own motion, the director may review an interlocutory order of the presiding officer. In determining whether to do so, the director shall weigh the extent to which granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the director at the time of the review of the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

Interlocutory appeals do not apply to licensing.

7.50(13) *Consolidation and severance.*

a. *Consolidation.* The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where:

(1) The matters at issue involve common parties or common questions of fact or law;

(2) Consolidation would expedite and simplify consideration of the issues involved; and

(3) Consolidation would not adversely affect the rights of any of the parties to those proceedings.

b. *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

Since stipulations are encouraged, it is expected and anticipated that the parties proceeding to a hearing will stipulate to evidence to the fullest extent to which complete or qualified agreement can be reached including all material facts that are not, or should not be, fairly in dispute.

Without the necessity of proceeding to an evidentiary hearing in a contested case, the parties may agree in writing to informally dispose of the case by stipulation, agreed settlement, consent order, or by another method agreed upon. If such informal disposition is utilized, the parties shall so indicate to the presiding officer that the case has been settled. Upon request, the presiding officer shall issue a closing order to reflect such a disposition. The contested case is terminated upon issuance of a closing order.

Unless otherwise precluded by law, the parties in a contested case proceeding may mutually agree to waive any provision under these sets of rules governing the contested case proceedings.

This rule is intended to implement Iowa Code sections 17A.15(3), 421.60, 422.57(1) and 452A.68.

701—7.51(17A) Record and transcript. The record in a contested case shall include:

1. All pleadings, motions and rulings;
2. All evidence received or considered and all other submissions;
3. A statement of all matters officially noticed;
4. All questions and offers of proof, objections, and rulings thereon;
5. All proposed findings and exceptions;
6. All orders of the presiding officer; and
7. The order of the director on appeal or review.

Oral hearings regarding proceedings on appeal to or considered on motion of the director which are recorded by mechanical means shall not be transcribed for the record of such appeal or review unless a party, by written notice, or the director, orally or in writing, requests such transcription. Such a request must be filed with the clerk of the hearings section for the department who will be responsible for making the transcript. A transcription will be made only of that portion of the oral hearing relevant to the appeal or review, if so requested, and no objection is made by any other party to the proceeding or the director. Upon request, the department shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

Upon issuance of a proposed decision which leaves no issues open for further consideration or upon issuance of a closing order, the administrative hearings division shall promptly forward the record of a contested case proceeding to the director. However, the administrative hearings division may keep the tapes and any evidentiary proceeding in case a transcript of the proceeding is required and, if one is required, the administrative hearings division shall make the transcription and promptly forward the tapes and the transcription to the director.

701—7.52(17A) Rehearing. Any party to a contested case may file an application with the director for a rehearing in the contested case, stating the specific grounds therefor and the relief sought. The application must be filed within 20 days after the final order is issued. See subrule 7.50(7) as to when a proposed order becomes a final order. A copy of such application shall be timely mailed by the applicant to all parties in conformity with rule 701—7.53(17A). The director shall have 20 days from the filing of the application to grant or deny the rehearing. If the application is granted, a notice will be served on the

parties stating the time and place of the rehearing. An application for rehearing shall be deemed denied if not granted by the director within 20 days after filing.

The application for rehearing which is filed shall contain a caption in the following form:

BEFORE THE DEPARTMENT OF REVENUE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF _____ (state taxpayer's name and address and designate type of proceeding, e.g., income tax refund claim).	APPLICATION FOR REHEARING DOCKET NO._____

The application for rehearing shall substantially state in separate numbered paragraphs the following:

1. Clear and concise statements of the reasons for requesting a rehearing and each and every error which the party alleges to have been committed during the contested case proceedings;
2. Clear and concise statements of all relevant facts upon which the party relies;
3. Reference to any particular statute or statutes and any rule or rules involved;
4. The signature of the party or that of the party's representative, the address of the party or the party's representative, and the telephone number of the party or the party's representative.

No applications for rehearing shall be filed with or entertained by an administrative law judge.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

701—7.53(17A) Service. All papers or documents required by 701—Chapter 7 to be filed with the department or the presiding officer and served upon the opposing party or other person shall be served by ordinary mail unless another rule specifically refers to another method. All notices required by 701—Chapter 7 to be served on parties or persons by the department or presiding officer shall be served by ordinary mail unless another rule specifically refers to another method.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

701—7.54(17A) Ex parte communications and disqualification.

7.54(1) *Ex parte communication.* A party that has knowledge of a prohibited communication by any party or presiding officer should file a copy of the written prohibited communication or a written summary of the prohibited oral communication with the clerk of the hearings section for the department. The clerk of the hearings section for the department is to transfer the filed copy of the prohibited communication to the presiding officer.

a. Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the department or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in this rule, prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

b. "Ex parte" communication defined. Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

c. How to avoid prohibited communications. To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rules in this division and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone calls, including all parties or their representatives.

d. Joint presiding officers. Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

e. Advice to presiding officer. Persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with the rules in this division.

f. Procedural communications. Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines.

g. Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication, shall be submitted for inclusion in the record under seal by protective order. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

h. Disclosure by presiding officer. Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

i. Sanction. The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule, including default, a decision against the offending party, censure, suspension, or revocation of the privilege to practice before the department or the administrative hearings division. Violation of ex parte communication prohibitions by department personnel or their representatives shall be reported to the clerk of the hearings section for the department for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

7.54(2) *Disqualification of a presiding officer.* Request for disqualification of a presiding officer must be filed in the form of a motion supported by an affidavit asserting an appropriate ground for disqualification. A substitute presiding officer may be appointed by the division of administrative hearings pursuant to 1998 Iowa Acts, chapter 1202, section 15, if the disqualified presiding officer is an administrative law judge. If the disqualified presiding officer is the director, the governor must appoint a substitute presiding officer.

a. Grounds for disqualification. A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

(1) Has a personal bias or prejudice concerning a party or a representative of a party;

(2) Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties.

(3) Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;

(4) Has acted as counsel to any person who is a private party to that proceeding within the past two years;

(5) Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

(6) Has a spouse or relative within the third degree of relationship that:

1. Is a party to the case, or an officer, director or trustee of a party;
2. Is a lawyer in the case;
3. Is known to have an interest that could be substantially affected by the outcome of the case; or
4. Is likely to be a material witness in the case; or

(7) Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

b. "Personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other department functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by 1998 Iowa Acts, chapter 1202, section 19(3), and these rules.

c. Disqualification and the record. In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

d. Motion asserting disqualification. If a party asserts disqualification on any appropriate ground, the party shall file a motion supported by an affidavit pursuant to 1998 Iowa Acts, chapter 1202, section 19(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal and seek a stay as provided under this division.

701—7.55(17A) Licenses.

7.55(1) *Denial of license, refusal to renew license.* When the department is required by constitution or statute to provide notice and an opportunity for an evidentiary hearing prior to the refusal or denial of a license, a notice, as prescribed in 701—7.47(17A), shall be served by the department upon the licensee or applicant. Prior to the refusal or denial of a license, the department shall give 30 days' written notice to the applicant or licensee in which to appear at a hearing to show cause why a license should not be refused or denied. In addition to the requirements of 701—7.47(17A) the notice shall contain a statement of facts or conduct and the provisions of law which warrant the denial of the license or the refusal to renew a license. If the licensee so desires, the licensee may file a petition as provided in subrule 701—7.55(3) with the presiding officer within 30 days prior to the hearing. The department may, in its discretion, file

an answer to a petition filed by the licensee prior to the hearing. Thereafter, the rules contained in this division governing contested case proceedings shall apply.

When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the department, and in case the application is denied or the terms of the new license limited, until the last date for seeking judicial review of the department's order or a later date fixed by order of the department or the reviewing court. See 195—subrule 20.4(1) regarding gambling license applications.

7.55(2) *Revocation of license.* The department shall not revoke, suspend, annul or withdraw any license until written notice is served by personal service or restricted certified mail pursuant to 701—7.47(17A) within the time prescribed by the applicable statute and the licensee whose license is to be revoked, suspended, annulled or withdrawn, is given an opportunity to show at an evidentiary hearing conducted pursuant to the rules governing contested case proceedings in this chapter compliance with all lawful requirements for the retention of the license. However, in the case of the revocation, suspension, annulment, or withdrawal of a sales or use tax permit, written notice will be served pursuant to 701—7.47(17A) only if the permit holder requests that this be done following notification, by ordinary mail, of the director's intent to revoke, suspend, annul, or withdraw the permit. In addition to the requirements of 701—7.47(17A) the notice shall contain a statement of facts or conduct and the provisions of law which warrant the revocation, suspension, annulment, or withdrawal of the license. A licensee whose license may be revoked, suspended, annulled, or withdrawn, may file a petition as provided in subrule 7.55(3) with the clerk of the hearings section for the department prior to the hearing. The department may, in its discretion, file an answer to a petition filed by the licensee prior to the hearing. Thereafter, the rules contained in this division governing contested case proceedings shall apply.

Notwithstanding the above, if the department finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in an order to the licensee, summary suspension of a license shall be ordered pending proceedings for revocation as provided herein. These proceedings shall be promptly instituted and determined. When a summary suspension as provided herein is ordered, a notice of the time, place and nature of the evidentiary hearing shall be attached to the order.

7.55(3) *Petition.* When a person desires to file a petition as provided in subrules 7.55(1) and 7.55(2), the petition to be filed shall contain a caption in the following form:

BEFORE THE DEPARTMENT OF REVENUE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF _____ (state taxpayer's name, and address and type of license).	}	PETITION DOCKET NO._____ (filled in by Department)

The petition shall substantially state in separate numbered paragraphs the following:

1. The full name and address of the petitioner;
2. Reference to the type of license and the relevant statutory authority;
3. Clear, concise and complete statements of all relevant facts showing why petitioner's license should not be revoked, refused, or denied;
4. Whether a similar license has previously been issued to or held by petitioner or revoked and if revoked the reasons therefor; and
5. The signature of the petitioner or petitioner's representative, the address of petitioner and of petitioner's representative, and the telephone number of petitioner or petitioner's representative.

701—7.56(17A) Declaratory order—in general. Any oral or written advice or opinion rendered to members of the public by department personnel not pursuant to a petition for declaratory order is not

binding upon the department. However, department personnel, including field personnel, ordinarily will discuss substantive tax issues with members of the public or their representatives prior to the receipt of a petition for a declaratory order, but such oral or written opinions or advice are not binding on the department. This should not be construed as preventing members of the public or their representatives from inquiring whether the department will issue a declaratory order on a particular question. In these cases, however, the name of the taxpayer shall be disclosed. The department will also discuss questions relating to certain procedural matters as, for example, submitting a request for a declaratory order or submitting a petition to initiate rule-making procedures. Members of the public may, of course, seek oral technical assistance from a departmental employee in regard to the proper preparation of a return or report required to be filed with the department. Such oral advice is advisory only and the department is not bound to recognize it in the examination of the return, report or records.

7.56(1) *Petition for declaratory order.* Any person may file a petition with the Clerk of the Hearings Section for the Department of Revenue, Fourth Floor, Hoover State Office Building, Des Moines, Iowa 50319, seeking a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the department. A petition is deemed filed when it is received by the clerk of the hearings section for the department. The clerk of the hearings section for the department shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the clerk of the hearings section for the department an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

DEPARTMENT OF REVENUE

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	}	PETITION FOR DECLARATORY ORDER Docket No._____

The petition must provide the following information:

a. A clear and concise statement of all relevant facts on which the order is requested;

b. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law;

c. The questions petitioner wants answered, stated clearly and concisely;

d. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers;

e. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome;

f. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity;

g. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition;

h. Any request by petitioner for a meeting provided for by this rule; and

i. Whether the petitioner is presently under audit by the department.

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

7.56(2) *Notice of petition.* Within 15 days after receipt of a petition for a declaratory order, the clerk of the hearings section for the department shall give notice of the petition to all persons not served by the petitioner to whom notice is required by any provision of law. The clerk of the hearings section for the department may also give notice to any other persons.

7.56(3) *Intervention.*

a. Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order, shall be allowed to intervene in a proceeding for a declaratory order.

b. Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the department.

c. A petition for intervention shall be filed with the Clerk of the Hearings Section for the Department of Revenue, Fourth Floor, Hoover State Office Building, Des Moines, Iowa 50319. Such a petition is deemed filed when it is received by the clerk of the hearings section for the department. The clerk of the hearings section for the department will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

DEPARTMENT OF REVENUE

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original Petition).	}	PETITION FOR INTERVENTION Docket No._____

The petition for intervention must provide the following information:

(1) Facts supporting the intervenor's standing and qualifications for intervention;

(2) The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers;

(3) Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome;

(4) A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity;

(5) The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented;

(6) Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding;

(7) Whether the intervenor is presently under audit by the department; and

(8) Consent of the intervenor to be bound by the declaratory order.

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

For a petition for intervention to be allowed, the petitioner must have consented to be bound by the declaratory order and the petitioner must have standing regarding the issues raised in the petition for declaratory order. The petition for intervention must not correct or raise any additional facts that are in the petition for declaratory order. To have standing, the intervenor must have a legally protectible and tangible interest at stake in the petition for declaratory order under consideration by the director for which the party wishes to petition to intervene. Black's Law Dictionary, Centennial Edition, p. 1405, citing, Guidry v. Roberts, 331 So. 44, 50 (La.App.). Based on Iowa case law, the department may refuse to entertain a petition from one whose rights will not be invaded or infringed. Bowers v. Bailey 237 Iowa 295, 21 N.W.2d 773 (1946). The department may, by rule, impose a requirement of standing upon those that seek a declaratory order at least to the extent of requiring that they be potentially aggrieved or adversely affected by the department action or failure to act. Bonfield, "The Iowa Administrative Procedure Act, Background, Construction, Applicability and Public Access to Agency Law, The Rule-making Process," 60 Iowa Law Review 731, 805 (1975). The department adopts this requirement of standing for those seeking a petition for a declaratory order and those seeking to intervene in a petition for a declaratory order.

An association or a representative group is not considered to be an entity qualifying for filing a petition requesting a declaratory order on behalf of all of the association or group members. Each member of an association may not be similarly situated or represented by the factual scenario set forth in such a petition.

If a party seeks to have an issue determined by declaratory order, but the facts are different from a petition for declaratory order that is currently under consideration by the director, the interested party should not petition as an intervenor in the petition for declaratory order currently under the director's consideration. Instead, the party should file a separate petition for a declaratory order and the petition should include all of the relevant facts. The director may deny a petition for intervention without denying the underlying petition for declaratory order that is involved.

7.56(4) *Briefs.* The petitioner or any intervenor may file a brief in support of the position urged. The department may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised in the petition.

7.56(5) *Inquiries.* Inquiries concerning the status of a declaratory order proceeding may be made to Administrator of the Compliance Division, Department of Revenue, Fourth Floor, Hoover State Office Building, Des Moines, Iowa 50319.

7.56(6) *Service and filing of petitions and other papers.*

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

b. *Filing—when required.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order, shall be filed with Clerk of the Hearings Section for the Department of Revenue, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the department.

c. *Method of service, time of filing, and proof of mailing.* Method of service, time of filing, and proof of mailing shall be as provided in 701—7.41(17A) and 701—7.53(17A).

7.56(7) *Department consideration.* Upon request by petitioner in the petition, the department may schedule a brief and informal meeting between the original petitioner, all intervenors, and the department, a member of the department, or a member of the staff of the department, to discuss the questions raised. The department may solicit comments or information from any person on the questions raised. Also, comments or information on the questions raised may be submitted to the department by any person.

7.56(8) *Action on petition.*

a. Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the director shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5).

b. The date of issuance of an order or of a refusal to issue an order is as defined in 701—7.37(17A).

7.56(9) *Refusal to issue order.*

a. The department shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

(1) The petition does not substantially comply with the required form;

(2) The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the department to issue an order;

(3) The department does not have jurisdiction over the questions presented in the petition;

(4) The questions presented by the petition are also presented in a current rule making, contested case, or other department or judicial proceeding, that may definitively resolve them;

(5) The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter;

(6) The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order;

(7) There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances;

(8) The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct, in an effort to establish the effect of that conduct or to challenge a department decision already made;

(9) The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner;

(10) The petitioner requests the department to determine whether a statute is unconstitutional on its face; or

(11) The petition requests a declaratory order on an issue presently under investigation or audit or in rule-making proceedings or in litigation in a contested case or court proceedings.

b. A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

c. Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the department's refusal to issue an order.

7.56(10) *Contents of declaratory order—effective date.* In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

7.56(11) *Copies of orders.* A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

7.56(12) *Effect of a declaratory order.* A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. A declaratory order is binding on the department, the petitioner, and any intervenors. As to all other persons, a declaratory order serves only as precedent and is not binding on the department. The issuance of a declaratory order constitutes final department action on the petition. A declaratory order, once issued, will not be withdrawn at the request of the petitioner.

7.56(13) *Prejudice or no consent.* The department will not issue a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.

701—7.57(17A) Department procedure for rule making.

7.57(1) The department hereby adopts and incorporates by reference the following Uniform Rules on Agency Procedure for Rule Making, which are printed in the first volume of the Iowa Administrative Code, with the additions, changes, and deletions to those rules listed below:

X.2(17A) Advice on possible rules before notice of proposed rule adoption.

X.4(1) Notice of proposed rule making—contents.

X.4(3) Copies of notices. In addition to the text of this subrule, the department adds that the payment for the subscription and the subscription term is one year.

X.5(17A) Public participation. In addition to the text of this rule, the department also adds that written submissions should be submitted to the coadministrator of the Compliance Division, Department of Revenue, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319. Also, any requests for special requirements concerning accessibility are to be made to the Clerk of the Hearings Section, Department of Revenue, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319, telephone (515)281-7081;

X.6(17A) Regulatory analysis. In addition to the text of this rule, the department also adds that small businesses or organizations of small businesses may register on the department's small business impact

list by making a written application to the Administrator of the Compliance Division, Department of Revenue, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319;

X.7(17A,25B) Fiscal impact statement;

X.8(17A) Time and manner of rule adoption;

X.9(17A) Variance between adopted rule and published notice of proposed rule adoption; and

X.10(17A) Exemptions from public rule-making procedures. In addition to the text of this rule, the department also adds that exempt categories are generally limited to rules for nonsubstantive changes to a rule, such as rules for correcting grammar, spelling or punctuation in an existing or proposed rule.

X.11(17A) Concise statement of reasons. In addition to the text of this rule, the department also adds that a request for a concise statement of reasons for a rule must be submitted to the Administrator of the Compliance Division, Department of Revenue, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319.

X.12(1) Contents, style and form of rule—contents;

X.12(4) Contents, style and form—style and form;

X.14(17A) Filing of rules;

X.15(17A) Effectiveness of rules prior to publication;

X.16(17A) General statement of policy; and

X.17(17A) Review by agency of rules.

7.57(2) The department hereby states that the following cited Uniform Rules on Agency Procedure for Rule Making are not adopted by the department:

X.1(17A) Applicability;

X.3(17A) Public rule-making docket;

X.4(2) Notice of proposed rule making—incorporated by reference;

X.12(2) Contents, style, and form of rule—incorporation by reference;

X.12(3) Contents, style and form of rule—references to materials not published in full; and

X.13(17A) Agency rule-making record.

701—7.58(17A) Public inquiries on rule making and the rule-making records. The department maintains records of information obtained and all actions taken and criticisms received regarding any rule within the past five years. The department also keeps a record of the status of every rule within the rule-making procedure. Inquiries concerning the status of rule making may be made by contacting the Administrator of the Compliance Division, Department of Revenue, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319. For additional information regarding criticism of rules see 701—7.59(17A).

701—7.59(17A) Criticism of rules. The Administrator of the Compliance Division, Department of Revenue, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319, is designated as the office where interested persons may submit by electronic means or by mail criticisms, requests for waivers, or comments regarding a rule. A criticism of a specific rule must be more than a mere lack of understanding of a rule or a dislike regarding the rule. To constitute a criticism of a rule, the criticism must be in writing, indicate it is a criticism of a specific rule, and have a valid legal basis for support. All requests for waivers, comments, or criticisms received on any rule will be kept in a separate record for a period of five years by the department.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code section 421.60.

DIVISION III
WAIVER OR VARIANCE

701—7.60(78GA,HF2206) Waiver or variance of certain department rules. All discretionary rules or discretionary provisions in a rule over which the department has jurisdiction, in whole or in part, may be subject to waiver or variance. See subrules 7.60(3) and 7.60(4).

7.60(1) *Definitions.* The following terms apply to the interpretation and application of this rule:

"Discretionary rule" or *"discretionary provisions in a rule"* means rules or provisions in rules resulting from a delegation by the legislature to the department to create a binding rule to govern a given issue or area. The department is not interpreting any statutory provision of the law promulgated by the legislature in a discretionary rule. Instead, a discretionary rule is authorized by the legislature when the legislature has delegated the creation of binding rules to the department and the contents of such rules are at the discretion of the department. A rule that contains both discretionary and interpretive provisions is deemed to be a discretionary rule to the extent of the discretionary provisions in the rule.

"Interpretive rules" or *"interpretive provisions in rules"* means rules or provisions in rules which define the meaning of a statute or other provision of law or precedent where the department does not possess the delegated authority to bind the courts to any extent with its definition.

"Waiver or variance" means an agency action which suspends, in whole or in part, the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person.

7.60(2) *Scope of rule.* This rule creates generally applicable standards and a generally applicable process for granting individual waivers or variances from the discretionary rules or discretionary provisions in rules adopted by the department in situations where no other specifically applicable law provides for waivers or variances. To the extent another more specific provision of law purports to govern the issuance of a waiver or variance from a particular rule, the more specific waiver or variance provision shall supersede this rule with respect to any waiver or variance from that rule.

The waiver or variance provisions set forth in this rule do not apply to rules over which the department does not have jurisdiction or when issuance of the waiver or variance would be inconsistent with any applicable statute, constitutional provision or other provision of law.

7.60(3) *Applicability of this rule.* This rule applies only to waiver or variance of those departmental rules that are within the exclusive rule-making authority of the department. This rule shall not apply to interpretive rules that merely interpret or construe the meaning of a statute, or other provision of law or precedent, if the department does not possess statutory authority to bind a court, to any extent, with its interpretation or construction. Thus, this waiver or variance rule applies to discretionary rules and discretionary provisions in rules, and not to interpretive rules.

The application of this rule is strictly limited to petitions for waiver or variance filed outside of a contested case proceeding. Petitions for waiver or variance from a discretionary rule or discretionary provisions in rules filed after the commencement of a contested case as provided in 701—7.47(17A) will be treated as an issue of the contested case to be determined by the presiding officer of the contested case.

7.60(4) *Authority to grant a waiver or variance.* The director may not issue a waiver or variance under this rule unless:

a. The legislature has delegated authority sufficient to justify the action; and

b. The waiver or variance is consistent with statutes and other provisions of law. No waiver or variance from any mandatory requirement imposed by statute may be granted under this rule.

7.60(5) *Criteria for waiver or variance.* The director may, in the director's sole discretion, issue an order in response to a petition, granting a waiver or variance from a discretionary rule or a discretionary provision in a rule adopted by the department, in whole or in part, as applied to the circumstances of a specified person, if the director finds that the waiver or variance is consistent with subrules 7.60(3) and 7.60(4), and if all of the following criteria are also met:

a. The waiver or variance would not prejudice the substantial legal rights of any person;

b. The rule or provisions of the rule are not specifically mandated by statute or another provision of law;

c. The application of the rule or rule provision would result in an undue hardship or injustice to the petitioner; and

d. Substantially equal protection of public health, safety, and welfare will be afforded by means other than that prescribed in the rule or rule provision for which the waiver or variance is requested.

7.60(6) *Director's discretion.* The final decision to grant or deny a waiver or variance shall be vested in the director of revenue. This decision shall be made at the sole discretion of the director based upon consideration of relevant facts.

7.60(7) *Burden of persuasion.* The burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the director should exercise discretion to grant the petitioner a waiver or variance based upon the criteria contained in subrule 7.60(5).

7.60(8) *Contents of petition.* A petition for waiver or variance must be in the following format:

Iowa Department of Revenue

Name of Petitioner	*	Petition for
Address of Petitioner	*	Waiver
Type of Tax at Issue	*	Docket No._____

A petition for waiver or variance must contain all of the following, where applicable and known to the petitioner:

a. The name, address, telephone number, and case number or state identification number of the person or entity for whom a waiver or variance is being requested;

b. A description and citation of the specific rule or rule provisions from which a waiver or variance is being requested;

c. The specific waiver or variance requested, including a description of the precise scope and operative period for which the petitioner wants the waiver or variance to extend;

d. The relevant facts that the petitioner believes would justify a waiver or variance. This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts represented in the petition, and a statement of reasons that the petitioner believes will justify a waiver or variance;

e. A complete history of any prior contacts between the petitioner and the department relating to the activity affected by the proposed waiver or variance, including audits, notices of assessment, refund claims, contested case hearings, or investigative reports relating to the activity within the last five years;

f. Any information known to the petitioner relating to the department's treatment of similar cases;

g. The name, address, and telephone number of any public agency or political subdivision which might be affected by the grant of a waiver or variance;

h. The name, address, and telephone number of any person or entity who would be adversely affected by the granting of the waiver or variance;

i. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver or variance;

j. Signed releases of information authorizing persons with knowledge of relevant facts to furnish the department with information relating to the waiver or variance;

k. If the petitioner seeks to have identifying details deleted, which deletion is authorized by statute, such details must be listed with the statutory authority for the deletion; and

l. Signature by the petitioner at the conclusion of the petition attesting to the accuracy and truthfulness of the information set forth in the petition.

7.60(9) *Filing of petition.* A petition for waiver or variance must be filed with the clerk of the hearings section for the Department of Revenue, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50309.

7.60(10) *Additional information.* Prior to issuing an order granting or denying a waiver or variance, the director may request additional information from the petitioner relating to the petition and surrounding circumstances. The director may, on the director's own motion, or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner or the petitioner's representative, or both, and the director to discuss the petition and surrounding circumstances.

7.60(11) *Notice of petition for waiver or variance.* The petitioner shall provide, within 30 days of filing the petition for waiver or variance, a notice consisting of a concise summary of the contents of the petition for waiver or variance and stating that the petition is pending. Such notice shall be mailed by the petitioner to all persons entitled to such notice. Such persons to whom notice must be mailed include,

but are not limited to, the director and all parties to the petition for waiver or variance, or the parties' representatives. The petitioner must then file written notice with the clerk of the hearings section for the department (address indicated above) attesting that the notice has been mailed. The names, addresses and telephone numbers of the persons to whom the notices were mailed shall be included in the filed written notice. The department has the discretion to give such notice to persons other than those persons notified by the petitioner.

7.60(12) *Ruling on a petition for waiver or variance.* An order granting or denying a waiver or variance must conform to the following:

a. An order granting or denying a waiver or variance shall be in writing and shall contain a reference to the particular person and rule or rule provision to which the order pertains, a statement of the relevant facts and reasons upon which the action is based and a description of the narrow and precise scope and operative time period of a waiver or variance, if one is issued.

b. If a petition requested the deletion of identifying details, then the order must either redact the details prior to the placement of the order in the public record file referenced in subrule 7.60(17) or set forth the grounds for denying the deletion of identifying details as requested.

c. Conditions. The director may condition the grant of a waiver or variance on any conditions which the director deems to be reasonable and appropriate in order to protect the public health, safety and welfare.

7.60(13) *Time period for waiver or variance; extension.* Unless otherwise provided, an order granting a petition for waiver or variance will be effective for 12 months from the date the order granting the waiver or variance is issued. Renewal of a granted waiver or variance is not automatic. To renew the waiver or variance beyond the 12-month period, the petitioner must file a new petition requesting a waiver or variance. The renewal petition will be governed by the provisions in this rule and must be filed prior to the expiration date of the previously issued waiver or variance or extension of waiver or variance. Even if the order granting the waiver or variance was issued in a contested case proceeding, any request for an extension shall be filed with and acted upon by the director. However, renewal petitions must request an extension of a previously issued waiver or variance. Granting the extension of the waiver or variance is at the director's sole discretion and must be based upon whether the factors set out in subrules 7.60(4) and 7.60(5) remain valid.

7.60(14) *Time for ruling.* The director shall grant or deny a petition for waiver or variance as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees in writing to a later date or the director indicates in a written order that it is impracticable to issue the order within the 120-day period.

7.60(15) *When deemed denied.* Failure of the director to grant or deny a waiver or variance within the 120-day or the extended time period shall be deemed a denial of that petition**.**

7.60(16) *Service of orders.* Within seven days of its issuance, any order issued under this rule shall be transmitted to the petitioner or the person to whom the order pertains, and to any other person entitled to such notice by any provision of law.

7.60(17) *Record keeping.* The department is required to maintain a record of all petitions for waiver or variance and rulings granting or denying petitions for waiver or variance.

a. Petitions for waiver or variance. The department shall maintain a record of all petitions for waiver or variance available for public inspection. Such records will be indexed and filed and made available for public inspection at the clerk of the hearings section for the department at the address previously set forth in subrule 7.60(9).

b. Report of orders granting or denying a waiver or variance. All orders granting or denying a waiver or variance shall be summarized in a semiannual report to be drafted by the department and submitted to the administrative rules coordinator and the administrative rules review committee.

7.60(18) *Cancellation of waiver or variance.* A waiver or variance issued pursuant to this rule may be withdrawn, canceled, or modified if, after appropriate notice, the director issues an order finding any of the following:

a. The person who obtained the waiver or variance order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver or variance; or

b. The alternative means for ensuring that public health, safety, and welfare will be adequately protected after issuance of the waiver or variance order have been demonstrated to be insufficient, and no other means exist to protect the substantial legal rights of any person; or

c. The person who obtained the waiver or variance has failed to comply with all of the conditions in the waiver or variance order.

7.60(19) *Violations.* A violation of a condition in a waiver or variance order shall be treated as a violation of the particular rule or rule provision for which the waiver or variance was granted. As a result, the recipient of a waiver or variance under this rule who violates a condition of the waiver or variance may be subject to the same remedies or penalties as a person who violates the rule or rule provision at issue.

7.60(20) *Defense.* After an order granting a waiver or variance is issued, the order shall constitute a defense, within the terms and the specific facts indicated therein, for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked, unless subrules 7.60(18) and 7.60(19) are applicable.

7.60(21) *Hearing and appeals.* Appeals from a decision granting or denying a waiver or variance in a contested case proceeding shall be in accordance with 701—Chapter 7 governing hearings and appeals from decisions in contested cases. These appeals shall be taken within 30 days of the issuance of the ruling granting or denying the waiver or variance request, unless a different time is provided by rule or statute, such as provided in the area of license revocation (see 701—7.55(17A)).

The provisions of Iowa Code sections 17A.10 to 17A.18A and the department rules 701—Chapter 7 regarding contested case proceedings shall apply to any petition for waiver or variance of a rule or provisions in a rule filed within a contested case proceeding. A petition for waiver or variance of a rule provision in a rule outside of a contested case proceeding will not be considered under the statutes or the department's rules relating to contested case proceedings. Instead, the director's decision on the petition for waiver or variance is considered to be "other agency action."

This rule is intended to implement 2000 Iowa Acts, House File 2206.

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CHAPTER 8
FORMS AND COMMUNICATIONS
[Prior to 12/17/86, Revenue Department[730]]

701—8.1(17A) Definitions. For the purposes of these rules the following definitions apply, unless the context otherwise requires:

"Communication" means any method of transfer of data, information, or money by any conduit or mechanism.

"Department" means the Iowa department of revenue.

"Director" means the director of the department of revenue.

"Form" means any overall physical arrangement and general layout of communications, using any method of communication, related to tax or other administration and prescribed by the director or otherwise required by law.

"Person" means any individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

"Return" means any form required for tax administration from any person to the department.

This rule is intended to implement Iowa Code paragraph 17A.3(1)*"b."*

701—8.2(17A) Official forms. The department and the director have developed and provide or prescribe many official forms designed to help persons exercise their rights and discharge their duties under the tax laws and rules, to explain tax laws and rules, to assist in the administration of tax laws and rules, and to assist in general financial administration. Communications with the department, for which official forms have been created, shall be carried out using those forms or approved substitutes. Each direction of every instruction contained within or accompanying official forms shall be followed and each question within or accompanying every form shall be answered as if the instructions and forms were contained in these rules.

Copies of all official forms, instructions and communication formats may be obtained from the Iowa Department of Revenue, Taxpayer Services Section, Hoover State Office Building, Box 10457, Des Moines, Iowa 50306; from the department's various field offices located throughout the state; by telephoning (800)367-3388 or (515)281-3114 (for large orders of forms: (515)281-5370); or by faxing (515)242-6040 or by using the fax-on-demand system (800)572-3943.

8.2(1) *Nature of official forms.* Most, but not all, official forms are on paper. As prescribed by the director, communication means other than paper documents may be used for official forms.

8.2(2) *Mailing addresses.* The following post office box numbers should be used when corresponding with the department. All addresses are completed: Des Moines, Iowa 50306.

Box Number	Addressee
10411	Withholding — Other than High Dollar
10412	Sales Tax Returns — Other than High Dollar
10413	Revenue Operations
	Real Estate Transfer
	Accounts and Finance
	Receiving Unit
	Records
	Electronic Funds Transfer Registration
	Treasurers' Monthly Use Tax
	Franchise Estimates
	Cigarette Tax Inventories

10455	Insurance
10456	Compliance Division Examination Section Investigative Audit Audit Services Motor Fuel Refund Cigarette and Tobacco Tax Returns and General Mail
10457	Technical Services Policy Taxpayer Services
10458	Field Services
10459	Property Tax Credit Rent Reimbursement
10460	Department of Revenue Administration Information and Management Services Local Government Services Clerk of the Hearing Section
10462	Sales Tax Return — High Dollar
10463	Withholding — High Dollar
10464	Collections
10466	Individual Estimates
10467	Fiduciary and Inheritance
10468	Corporation Tax Corporation Returns Corporation Estimates
10469	Consumer Use Tax
10470	Retailers' Use Tax
10471	Accounts Receivable Pre-edit Collections

10472 Priority Handling
Hearing Officer
Cigarette Stamp Orders

This rule is intended to implement Iowa Code paragraph 17A.3(1)*"b."*

701—8.3(17A) Substitution of official forms. This rule is to provide guidance for the use of other than official forms, whether they use paper, are computer-generated, or are created using other media for communication. Approval shall be obtained prior to use of computer forms, replacement forms, reproduced forms, facsimile forms, or any other forms not designed by the department. The director reserves the right to make changes to forms when needed without prior notification to users of forms. The director also reserves the right to require use of official forms in communications with the department concerning tax administration or other matters.

8.3(1) *Types of substitute forms.* Many types of forms may, upon approval, be substituted for official forms. Descriptions of a partial list follow.

a. Reproduced forms. Reproduction (photocopy reprinting) of Iowa tax forms may be accomplished without prior approval of the department provided the following conditions are met:

(1) There is no variation from the official copy or format provided by the department, including reduction and enlargement or other format specification.

(2) Reprinting, copying, or reproduction of the form is not prohibited by another rule within this chapter.

(3) Reprinting or reproduction of the form does not vary from criteria stated elsewhere in this chapter.

b. Replacement forms. Replacement forms are forms which are retypeset, produced by imagery, or otherwise replicated using the department official form as a model. These forms may include facsimiles of department forms that have been modified by the addition of pin-feeds, line enlargements, copy deletion, or any other modifications. All replacement forms must be submitted to the department for approval prior to use.

c. Computer-generated forms. Computer-generated forms are forms that are created in their entirety, including layout, by the computer. These forms must be a facsimile of the official form that it is meant to replace. Also, computer-generated forms must have prior approval of the department before the form will be accepted for processing.

d. Federal forms. Federal forms, or their alternates, do not require prior approval for use provided the form is approved for federal use and Iowa tax instructions or other administrative instructions authorize or require the use of federal forms in lieu of official Iowa forms.

e. Magnetic tape, diskette, and electronic reporting. Any use of magnetic tape, diskettes, or any electronic transmission in other than official form requires prior approval of the department. No prior approval is necessary for submission of magnetic tape and diskette reports for certain information reporting when they are submitted in accordance with the department policy. Information concerning the submission of magnetic tape and diskettes is found in department publication, "State of Iowa Income Information Return Reporting Guidelines," which is available from Taxpayer Services Section, P.O. Box 10457, Des Moines, Iowa 50306, or by telephone at (515)281-3114.

8.3(2) *Approval of substitute forms.* Prior approval of substitute forms may be obtained by writing Information and Management Services, P.O. Box 10460, Des Moines, Iowa 50306, by telephoning (515)281-5777, or by faxing (515)242-6040. Fax communication to the department of approval requests are acceptable only in limited circumstances because approval of substitute paper document forms requires receipt by the department of a sample of the actual substitute form before approval can be provided. Normally, approval will be granted for use of substitute forms for one year only. If doubt exists about the need for approval of a particular substitute form, the form should be submitted for consideration.

8.3(3) *Failure to obtain required approval.* Other than official or approved forms filed with the department may be returned at the discretion of the director.

8.3(4) *Forms that may not be reproduced.* Certain forms supplied by the department shall not be duplicated or reproduced because of special processing requirements for the forms. These forms will normally have an optical scan line with special characters or print to ensure that automated processing equipment accurately credits the proper accounts. Exceptions to allow reproduction may occur on a limited basis with the consent of the department. The requestor must demonstrate compatibility with and meet all requirements and standards of the department to ensure proper and accurate processing of the form by the department. The department, at its option, may provide an explanation as to why a form is not acceptable, but is not required to do so. Forms that may not be reproduced, except as provided for above, include but are not limited to:

a. Sales/use tax returns.

b. Withholding tax returns.

c. Annual withholding verified summary of payments forms.

d. Department-generated accounts receivable notices.

8.3(5) *General information.* The following general information is applicable to all reproduced, replacement, or computer-generated forms:

a. *Paper.* Paper must be of at least equal quality to stock used by the department for official forms. Carbon-bonded paper is prohibited for all forms. Colored paper should be used for all forms substituting for official paper forms unless paper used is of the identical color of an official paper form.

b. *Ink and imaging material.* Black ink or black imaging material should be used in the printing or duplication of all substitute forms using paper.

c. *Size.* Reproduced or computer-generated paper forms must be the same size as the official form.

d. *Legibility.* All forms must have a high standard of legibility.

e. *Distinctive markings and symbols.* Some official forms contain distinctive symbols. These symbols must be reproduced on other than official forms.

f. *Labels.* Preprinted labels furnished by the department should be affixed to returns submitted to the department.

g. *Accuracy of reproduction.* Forms submitted for approval should be a facsimile of the official form. No variation from the official form will be allowed for forms which are identified as returns.

This rule is intended to implement Iowa Code paragraph 17A.3(1)*"b."*

701—8.4(17A) Description of forms. Forms prescribed by the director can be divided into those required for the administration of various taxes and those required for administrative systems other than tax-related.

8.4(1) *Tax forms.* Taxes administered by the department that require forms are listed in the following lettered paragraphs:

a. Corporate income return systems include forms designed by the department as well as forms used in federal tax administration. Approved substitute forms may be used for returns.

b. Corporate income tax field and office audit systems, related field collections systems, and the corporate tax error resolution system have forms designed by the department. Approved substitute forms may be used.

c. Franchise tax returns include forms designed by the department as well as forms used in federal tax administration. Approved substitute forms may be used for returns.

d. Franchise audit and collection systems have forms designed by the department. Approved substitute forms may be used.

e. Corporate and franchise estimated tax systems have forms designed by the department. Approved substitute forms may be used.

f. Individual and fiduciary income returns include forms designed by the department as well as forms used in federal tax administration. Approved substitute forms may be used for returns.

g. Individual and fiduciary income tax field and office audit systems and related field collections systems have forms designed by the department. Approved substitutes may be used.

h. New jobs tax credit system has forms designed by the department. Approved substitute forms may be used.

i. Individual income tax withholding returns and annual withholding verified summary of payments forms systems have forms designed by the department. No substitute forms may be used.

j. IA-W4 system, declaration of estimated tax, and withholding penalty waiver systems have forms designed by the department. Approved substitutes may be used.

k. Sales and use tax returns systems have forms designed by the department. No substitute forms may be used.

l. Local option sales and services tax and hotel/motel tax systems have forms designed by the department. Approved substitute forms may be used.

m. Field and office audit and collections systems for sales and use tax, sales tax refund examination system, industrial machinery, equipment, and computer refund systems, and sales and use tax penalty waiver systems have forms designed by the department. Approved substitute forms may be used.

n. Motor vehicle fuel tax returns systems have forms designed by the department. Approved substitute forms may be used.

o. Special fuel tax returns systems have forms designed by the department. Approved substitute forms may be used.

p. Motor fuel tax and special fuel tax error resolution systems and related field and office audit and collection systems have forms designed by the department. Approved substitute forms may be used.

q. Inheritance, generation skipping transfer, qualified use inheritance, and estate tax returns systems have forms designed by the department. Approved substitute forms may be used.

r. Inheritance, generation skipping transfer, qualified use inheritance and estate tax field and office audit systems, and related field collections systems have forms designed by the department. Approved substitute forms may be used.

s. Cigarette and tobacco tax systems with related office and field audit and field collection systems have forms designed by the department. Approved substitute forms may be used.

t. Property assessor and deputy assessor examination records systems have forms designed by the department. Approved substitute forms may be used.

u. Central property tax assessments system has forms designed by the department. Approved substitute forms may be used.

v. Elderly credit mobile home, Iowa disabled and senior citizen property tax, and special assessment credit systems have forms designed by the department. Approved substitute forms may be used.

w. Environmental protection charge systems have forms designed by the department. Approved substitute forms may be used.

x. Excise tax on unlawful dealing in certain substances system has forms designed by the department. Approved substitute forms may be used.

y. Taxpayer contact systems have forms designed by the department. Approved substitute forms may be used.

z. Federal and state exchange of information systems have forms designed by the department as well as others. Approved substitute forms may be used.

aa. Accounts receivable notices system has forms designed by the department. No substitute forms may be used.

bb. The department shall provide the taxpayer a statement of the rights of a taxpayer and obligations of the department during an audit, procedures by which a taxpayer may appeal an adverse decision of the department, and procedures which the department uses to enforce the tax laws. No substitute form may be used.

8.4(2) *Other forms.* Rescinded IAB 4/14/04, effective 5/19/04.

This rule is intended to implement Iowa Code paragraph 17A.3(1)*"b"* and sections 421.7 and 422.21.

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CHAPTER 9
FILING AND EXTENSION OF TAX LIENS AND CHARGING OFF UNCOLLECTIBLE TAX ACCOUNTS

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

701—9.1(422,423) Definitions. As used in the rules contained herein the following definitions apply unless the context otherwise requires:

"Assessment issued" means the most recent assessment in point of time for tax due from the taxpayer for the tax type and tax period.

"Charging off" means deleting an unpaid tax account from records of the department but may not include filing a release of the lien with the office of the recorder in which filed.

"Defunct corporation" means a corporation that has dissolved or ceased to exist with no assets remaining.

"Department" means the Iowa department of revenue.

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

"Lien" means the claim against personal or real property provided by Iowa Code section 422.26, other Code sections making reference to sections 422.26 and 424.11.

"Recorder" means the county recorder of any county in the state of Iowa.

"Taxes" means all taxes or charges administered by the department, which include but are not limited to individual income, fiduciary withholding, corporate income, franchise, sales, use, hotel/motel, railroad fuel, equipment car, motor vehicle fuel taxes and the environmental protection charge imposed upon petroleum diminution due and payable to the state of Iowa.

701—9.2(422,423) Lien attaches. If tax is unpaid, a lien shall attach at the time the tax became due and payable.

701—9.3(422,423) Purpose of filing. The notice of lien is filed with the county recorder to establish a priority interest in assets of the taxpayer for unpaid tax, penalty, and interest and to provide constructive notice of an unpaid tax liability as a matter of public record.

701—9.4(422,423) Place of filing. A notice of lien may be filed in the office of the recorder in the county of the taxpayer's last-known address, as well as with the recorder in any other county in the state of Iowa in which the taxpayer is known to own property.

701—9.5(422,423) Time of filing. A notice of lien will be filed after failure of taxpayer to protest the notice of assessment or to pay the full amount of the assessment within the time periods provided by law. In case a return is not timely filed, or is received without a remittance, or an unhonored check is submitted, or in case a jeopardy assessment is made, a lien may be filed at the time the notice of assessment is issued. Notwithstanding a timely protest of the assessment by the taxpayer, a notice of tax lien may be filed if the director has reason to believe that collection of the taxes may be jeopardized by delay.

701—9.6(422,423) Period of lien. A lien continues in effect for ten years from the date the last assessment in point of time is issued unless extended, released, or discharged as hereinafter provided. Liens attaching prior to January 1, 1969, expire on January 1, 1979, unless extended, released, or discharged as hereinafter provided.

9.6(1) A lien may be extended by the director for an additional ten years, from the expiration date of the original lien or prior extension, with no limit on the number of extensions, by filing a written notice of extension with the recorder of the county where the lien was filed. The extension notice shall be made within ten years from the date the last assessment in point of time is issued or within ten years of a prior extension.

9.6(2) A lien will be released by the director when payment of the tax, penalty, interest and costs is made. The release shall be evidenced by a satisfaction of the tax liability filed by the director with the

recorder and the proper entry of the satisfaction on the index of the notice of lien on file in the office of the recorder. The satisfaction of the tax, penalty, interest and costs will be filed immediately only if payment is made by cash, cashier's check, or similar guarantee of funds.

9.6(3) The director may charge off any account before the lien has lapsed if it meets one or more of the following criteria:

a. The taxpayer is deceased and there are no assets in the estate or there are no assets available for the payment of taxes under Iowa Code section 633.425.

b. The taxpayer is a defunct corporation.

c. The taxpayer is found not to have been properly notified by assessment notice of a tax due for a period outside the statute of limitations for assessment.

d. The taxpayer is retired because of age or total disability (see 701—73.12(425) for definition) with income such that it would cause the taxpayer undue financial hardship if the department enforced collection of past due taxes. The director may require an income statement, net worth statement or other evidence to determine when collection of tax would be a hardship on a taxpayer.

e. The taxpayer has unpaid tax amounting to less than $50.

f. The taxpayer cannot be found, after diligent inquiry, and has no property upon which the lien can attach.

g. The taxpayer is insolvent with no property, real or personal, upon which the lien can attach.

A lien may be released by the director, as provided in subrule 9.6(2), when an account is charged off under *"c," "d," "e," "f,"* or *"g"* above.

9.6(4) Liens filed without date of assessment. Notices of liens filed or extensions of liens filed, securing tax, penalty, interest, and fees remaining due and payable on January 1, 1990, and for periods thereafter without the date of the last assessment in point of time, expire ten years from the date the lien attaches, or at the expiration of the most recent ten-year extension, unless the notice of the lien or notice of the extension is refiled to include the date of the last assessment in point of time, in which case the date of the assessment controls the expiration date.

This rule is intended to implement Iowa Code section 422.26.

701—9.7(422,423) Fees. Any fee charged by the recorder for recording a lien or a lien extension will be paid by the department, with the cost added to the unpaid liability of the taxpayer.

These rules are intended to implement Iowa Code section 422.26 and chapter 424.

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CHAPTER 10
INTEREST, PENALTY, EXCEPTIONS TO PENALTY, AND JEOPARDY ASSESSMENTS

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

Rules 701—10.20(421) to 701—10.111(422A) are excerpted from 701—Chs 12, 30, 44, 46, 52, 58, 63, 81, 86, 88, 89, 104, IAB 1/23/91

701—10.1(421) Definitions. As used in the rules contained herein, the following definitions apply unless the context otherwise requires:

10.1(1) *"Department"* means the department of revenue.

10.1(2) *"Director"* means the director of the department or authorized representative.

10.1(3) *"Taxes"* means all taxes and charges arising under Title X of the Iowa Code, which include but are not limited to individual income, withholding, corporate income, franchise, sales, use, hotel/motel, railroad fuel, equipment car, replacement tax, statewide property tax, motor vehicle fuel, inheritance, estate and generation skipping transfer taxes and the environmental protection charge imposed upon petroleum diminution due and payable to the state of Iowa.

701—10.2(421) Interest. Except where a different rate of interest is provided by Title X of the Iowa Code, the rate of interest on interest-bearing taxes and interest-bearing refunds arising under Title X is fixed for each calendar year by the director. In addition to any penalty computed, there shall be added interest as provided by law from the original due date of the return. Any portion of the tax imposed by statute which has been erroneously refunded and is recoverable by the department shall bear interest as provided in Iowa Code section 421.7, subsection 2, from the date of payment of the refund, considering each fraction of a month as an entire month. Interest which is not judgment interest is not payable on sales and use tax, local option tax, and hotel and motel tax refunds. *Herman M. Brown v. Johnson,* 248 Iowa 1143, 82 N.W.2d 134 (1957); *United Telephone Co. v. Iowa Department of Revenue,* 365 N.W.2d 647 (Iowa 1985). However, interest which is not judgment interest accrues on such refunds on or after January 1, 1995, and is payable on sales and use tax, local option tax and hotel and motel tax refunds on or after January 1, 1995.

10.2(1) *Calendar year 1982.* The rate of interest upon all unpaid taxes which are due as of January 1, 1982, will be 17 percent per annum (1.4% per month). This interest rate will accrue on taxes which were due and unpaid as of, or after, January 1, 1982. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1982. This interest rate of 17 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1982.

EXAMPLES:

1. The taxpayer, X corporation, owes corporate income taxes assessed to it for the year 1975. The assessment was made by the department in 1977. On January 1, 1982, that assessment had not been paid. The rate of interest on the unpaid tax assessed has accrued at the rate of 9 percent per annum (0.75% per month) through December 31, 1981. Commencing on January 1, 1982, the rate of interest on the unpaid tax will thereafter accrue at the rate of 17 percent per annum for 1982 (1.4% per month). If the tax liability is not paid in 1982, the rate of interest will then accrue in 1983 in accordance with the rate fixed by the director as set forth in Iowa Code section 421.7.

2. The taxpayer, Y, owes retail sales taxes assessed to it for the audit period January 1, 1979, through December 31, 1982. The assessment is made on March 1, 1983. For the tax periods in which the tax became due prior to January 1, 1982, the interest rate on such unpaid sales taxes accrued at 9 percent per annum (0.75% per month). Commencing on January 1, 1982, the entire unpaid portion of the tax assessed which was delinquent at that time will begin to accrue interest at the rate of 17 percent per annum. Those portions of the tax assessed first becoming delinquent in 1982 will bear interest at the rate of 17 percent per annum (1.4% per month). In the event that any portion of the tax assessed remains unpaid on January 1, 1983, the rate of interest will then accrue in 1983 in accordance with the rate fixed by the director as set forth in Iowa Code section 421.7.

3. The taxpayer, Z, files a refund claim for 1978 individual income taxes in March 1982. The refund claim is allowed in May 1982, and is paid. Z is entitled to receive interest at the rate of 9 percent per annum (0.75% per month) upon the refunded tax accruing through December 31, 1981, and is entitled

to interest at the rate of 17 percent per annum (1.4% per month) upon such tax from January 1, 1982, until the refund is paid.

4. A's 1981 individual income tax liability becomes delinquent on May 1, 1982. A owes interest, commencing on May 1, 1982, at the rate of 17 percent per annum (1.4% per month). In the event that A does not pay the liability in 1982, the rate of interest will then accrue in 1983 in accordance with the rate fixed by the director as set forth in Iowa Code section 421.7.

5. Decedent died December 15, 1976. The inheritance tax was due 12 months after death, or December 15, 1977. Prior to the due date, the estate was granted an extension of time, until September 1, 1978, to file the return and pay the tax due. The tax, however, was paid March 15, 1982. Interest accrues on the unpaid tax during the period of the extension of time (December 15, 1977, to September 1, 1978) at the rate of 6 percent per annum. Interest accrues on the delinquent tax from September 1, 1978, through December 31, 1981, at the rate of 8 percent per annum. Interest accrues on the delinquent tax from January 1, 1982, to the date of payment on March 15, 1982, at the rate of 17 percent per annum.

6. B files a refund for sales taxes paid for the periods January 1, 1979, through December 31, 1982, in March 1983. The refund is allowed in May 1983. Since no interest is payable on sales tax refunds, B is not entitled to any interest. *Herman M. Brown Co. v. Johnson,* 248 Iowa 1143 (1957). However, interest accrues and is payable on and after January 1, 1995.

The examples set forth in these rules are not meant to be all-inclusive. In addition, other rules set forth the precise circumstance when interest begins to accrue and whether interest accrues for each month or fraction of a month or annually as provided by law. Interest accrues as provided by law, regardless of whether the department has made a formal assessment of tax.

10.2(2) *Calendar year 1983.* The rate of interest upon all unpaid taxes which are due as of January 1, 1983, will be 14 percent per annum (1.2% per month). This interest rate will accrue on taxes which were due and unpaid as of, or after January 1, 1983. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1983. This interest rate of 14 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1983.

10.2(3) *Calendar year 1984.* The rate of interest upon all unpaid taxes which are due as of January 1, 1984, will be 9 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1984. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1984. This interest rate of 9 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1984.

10.2(4) *Calendar year 1985.* The rate of interest upon all unpaid taxes which are due as of January 1, 1985, will be 10 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1985. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1985. This interest rate of 10 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1985.

10.2(5) *Calendar year 1986.* The interest upon all unpaid taxes which are due as of January 1, 1986, will be 9 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1986. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1986. This interest rate of 9 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1986.

10.2(6) *Calendar year 1987.* The interest upon all unpaid taxes which are due as of January 1, 1987, will be 9 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after January 1, 1987. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1987. This interest rate of 9 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1987.

10.2(7) *Calendar year 1988.* The interest upon all unpaid taxes which are due as of January 1, 1988, will be 8 percent per annum (0.7% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after January 1, 1988. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1988. This interest rate of 8 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1988.

10.2(8) *Calendar year 1989.* The interest upon all unpaid taxes which are due as of January 1, 1989, will be 9 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after January 1, 1989. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1989. This interest rate of 9 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1989.

10.2(9) *Calendar year 1990.* The interest upon all unpaid taxes which are due as of January 1, 1990, will be 11 percent per annum (0.9% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after January 1, 1990. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1990. This interest rate of 11 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1990.

10.2(10) *Calendar year 1991.* The interest upon all unpaid taxes which are due as of January 1, 1991, will be 12 percent per annum (1.0% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1991. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1991. This interest rate of 12 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1991.

10.2(11) *Calendar year 1992.* The interest upon all unpaid taxes which are due as of January 1, 1992, will be 11 percent per annum (0.9% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1992. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1992. This interest rate of 11 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1992.

10.2(12) *Calendar year 1993.* The interest upon all unpaid taxes which are due as of January 1, 1993, will be 9 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1993. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1993. This interest rate of 9 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1993.

10.2(13) *Calendar year 1994.* The interest upon all unpaid taxes which are due as of January 1, 1994, will be 8 percent per annum (0.7% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1994. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1994. This interest rate of 8 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1994.

10.2(14) *Calendar year 1995.* The interest upon all unpaid taxes which are due as of January 1, 1995, will be 9 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1995. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1995. This interest rate of 9 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1995.

10.2(15) *Calendar year 1996.* The interest upon all unpaid taxes which are due as of January 1, 1996, will be 11 percent per annum (0.9% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1996. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after

January 1, 1996. This interest rate of 11 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1996.

10.2(16) *Calendar year 1997.* The interest rate upon all unpaid taxes which are due as of January 1, 1997, will be 10 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1997. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 1997. This interest rate of 10 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1997.

10.2(17) *Calendar year 1998.* The interest rate upon all unpaid taxes which are due as of January 1, 1998, will be 10 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1998. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 1998. This interest rate of 10 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1998.

10.2(18) *Calendar year 1999.* The interest rate upon all unpaid taxes which are due as of January 1, 1999, will be 10 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1999. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 1999. This interest rate of 10 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1999.

10.2(19) *Calendar year 2000.* The interest rate upon all unpaid taxes which are due as of January 1, 2000, will be 10 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2000. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2000. This interest rate of 10 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2000.

10.2(20) *Calendar year 2001.* The interest rate upon all unpaid taxes which are due as of January 1, 2001, will be 11 percent per annum (0.9% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2001. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2001. This interest rate of 11 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2001.

10.2(21) *Calendar year 2002.* The interest rate upon all unpaid taxes which are due as of January 1, 2002, will be 10 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2002. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2002. This interest rate of 10 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2002.

10.2(22) *Calendar year 2003.* The interest rate upon all unpaid taxes which are due as of January 1, 2003, will be 7 percent per annum (0.6% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2003. In addition, this interest will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2003. This interest rate of 7 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2003.

10.2(23) *Calendar year 2004.* The interest rate upon all unpaid taxes which are due as of January 1, 2004, will be 6 percent per annum (0.5% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2004. In addition, this interest will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2004. This interest rate of 6 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2004.

10.2(24) *Calendar year 2005.* The interest rate upon all unpaid taxes which are due as of January 1, 2005, will be 6 percent per annum (0.5% per month). This interest rate will accrue on taxes which are

due and unpaid as of, or after, January 1, 2005. In addition, this interest will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2005. This interest rate of 6 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2005.

10.2(25) *Calendar year 2006.* The interest rate upon all unpaid taxes which are due as of January 1, 2006, will be 8 percent per annum (0.7% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2006. In addition, this interest will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2006. This interest rate of 8 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2006.

10.2(26) *Calendar year 2007.* The interest rate upon all unpaid taxes which are due as of January 1, 2007, will be 10 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2007. In addition, this interest will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2007. This interest rate of 10 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2007.

10.2(27) *Calendar year 2008.* The interest rate upon all unpaid taxes which are due as of January 1, 2008, will be 10 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2008. In addition, this interest will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2008. This interest rate of 10 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2008.

10.2(28) *Calendar year 2009.* The interest rate upon all unpaid taxes which are due as of January 1, 2009, will be 8 percent per annum (0.7% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2009. In addition, this interest will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2009. This interest rate of 8 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2009.

This rule is intended to implement Iowa Code section 421.7.

701—10.3(422,450,452A) Interest on refunds. For those taxes on which interest accrues on refunds under Iowa Code sections 422.25(3), 422.28, 450.94, and 452A.65, interest shall accrue through the month in which the refund is mailed to the taxpayer and no further interest will accrue unless the department did not use the most current address as shown on the latest return or refund claim filed with the department.

This rule is intended to implement Iowa Code sections 422.25(3), 422.28, 450.94 and 452A.65.

701—10.4(421) Frivolous return penalty. A $500 civil penalty is imposed on the return of a taxpayer that is considered to be a "frivolous return." A "frivolous return" is: (1) A return which lacks sufficient information from which the substantial correctness of the amount of tax liability can be determined or contains information that on its face indicates that the amount of tax shown is substantially incorrect, or (2) a return which reflects a position of law which is frivolous or is intended to delay or impede the administration of the tax laws of this state.

If the frivolous return penalty is applicable, the penalty will be imposed in addition to any other penalty which has been assessed. If the frivolous return penalty is relevant, the penalty may be imposed even under circumstances when it is determined that there is no tax liability on the return.

The frivolous return penalty is virtually identical to the penalty for frivolous income tax returns which is authorized in Section 6702 of the Internal Revenue Code. The department will follow federal guidelines and court cases when determining whether or not the frivolous return penalty should be imposed.

The frivolous return penalty may be imposed on all returns filed with the department and not just individual income tax returns. The penalty may be imposed on an amended return as well as an original return. The penalty may be imposed on each return filed with the department.

10.4(1) *Nonexclusive examples of circumstances under which the frivolous return penalty may be imposed.* The following are examples of returns filed in circumstances under which the frivolous return penalty may be imposed:

a. A return claiming a deduction against income or a credit against tax liability which is clearly not allowed such as a "war," "religious," "conscientious objector" deduction or tax credit.

b. A blank or partially completed return that was prepared on the theory that filing a complete return and providing required financial data would violate the Fifth Amendment privilege against self-incrimination or other rights guaranteed by the Constitution.

c. An unsigned return where the taxpayer refused to sign because the signature requirement was "incomprehensible or unconstitutional" or the taxpayer was not liable for state tax since the taxpayer had not signed the return.

d. A return which contained personal and financial information on the proper lines but where the words "true, correct and complete" were crossed out above the taxpayer's signature and where the taxpayer claimed the taxpayer's income was not legal tender and was exempt from tax.

e. A return where the taxpayer claimed that income was not "constructively received" and the taxpayer was the nominee-agent for a trust.

f. A return with clearly inconsistent information such as when 99 exemptions were claimed but only several dependents were shown.

g. A document filed for refund of taxes erroneously collected with the contention that the document was not a return and that no wage income was earned. This was inconsistent with attached W-2 Forms reporting wages.

10.4(2) *Nonexclusive examples where the frivolous return penalty is not applicable.* The following examples illustrate situations where the frivolous return penalty would not be applicable:

a. A return which includes a deduction, credit, or other item which may constitute a valid item of dispute between the taxpayer and the department.

b. A return which includes innocent or inadvertent mathematical or clerical errors, such as an error in addition, subtraction, multiplication, or division or the incorrect use of a table provided by the department.

c. A return which includes a statement of protest or objection, provided the return contains all required information.

d. A return which shows the correct amount of tax due, but the tax due is not paid.

This rule is intended to implement Iowa Code section 421.8.

701—10.5(421) Exceptions from penalty provisions for taxes due and payable on or after January 1, 1987, and for tax periods ending on or before December 31, 1990. Rescinded IAB 11/10/04, effective 12/15/04.

PENALTY FOR TAX PERIOD BEGINNING AFTER JANUARY 1, 1991

701—10.6(421) Penalties. A penalty shall be assessed upon all tax and deposits due under the following circumstances:

1. For failure to timely file a return or deposit form there is a 10 percent penalty. This penalty, once imposed, will be assessed on all subsequent amounts due or required to be shown due on the return or deposit form.

EXAMPLE: The taxpayer fails to timely file a return and fails to timely pay the tax due. The department will assess a 10 percent penalty for failure to timely file the return but will not assess a 5 percent penalty for failure to timely pay. The department subsequently audits the untimely filed return and determines additional tax is due. The department shall assess a 10 percent penalty on the additional tax found due by an audit.

2. For failure to timely pay the tax due on a return or deposit form, there is a 5 percent penalty.

3. For a deficiency of tax due on a return or deposit form found during an audit, there is a 5 percent penalty. For purposes of this penalty, the audit deficiency shall be assessed only when there is a timely filed return or deposit form.

Audit deficiency occurs when the department determines additional tax is due.

4. For willful failure to file a return or deposit form with the intent to evade tax, or in the case of willfully filing a false return or deposit form with the intent to evade tax, there is a 75 percent penalty.

The penalty rates are uniform for all taxes and deposits due under this chapter.

The penalty for failure to timely file will take precedence over the penalty for failure to timely pay or an audit deficiency when more than one penalty is applicable.

5. Examples to illustrate the computation of penalty for tax periods beginning on or after January 1, 1991.

The following are examples to illustrate the computation of penalties imposed under rule 10.7(421). For purposes of these examples, interest has been computed at the rate of 12 percent per year or 1 percent per month. The tax due amounts are assumed to be the total amounts required to be shown due when considering whether the failure to pay penalty should be assessed on the basis that less than 90 percent of the tax was paid.

Example (a) — Failure to File

a. Tax due is $100.

b. Return filed 3 months and 10 days after the due date.

c. $100 paid with the return.

The calculation for additional tax due is shown below:

Tax	$100	
Penalty	10	(10% failure to timely file)
Interest	4	(4 months interest)
Total	$114	
Less payment	100	
Additional tax due	$ 14	

Example (b) — Failure to Pay

a. Tax due is $100.

b. Return is timely filed.

c. $0 paid.

The calculation for the total amount due 5 months after the due date is shown below:

Tax	$100	
Penalty	5	
Interest	5	(5 months interest)
Total	$110	

Example (c) — Failure to File and Failure to Pay

a. Tax due is $100.

b. Return is filed 2 months and 10 days after the due date.

c. $0 paid.

The calculation for the total amount due 3 months after the due date is shown below:

Tax	$100	
Penalty	10	(10% for failure to file)
Interest	3	(3 months interest)
Total due in 3rd month	$113	

Example (d) — Audit on Timely Filed Return

a. $100 in additional tax found due.

b. Timely filed return.

c. Audit completed 8 months after the due date of the return.

d. Return showed $100 as the computed tax, which was paid with the return.

The calculation for the total amount due is shown below:

Computed tax after audit	$200	
Less tax paid with return	100	
Additional tax due	$100	
Penalty	5	(5% for audit deficiency)
Interest	8	(8 months interest)
Total due	$113	

Example (e) — Audit on Late Return Granted an Exception From Failure to File

a. Tax due is $100.

b. Return filed 3 months and 10 days after the due date.

c. $100 paid with the return.

d. Taxpayer is granted an exception from penalty for failure to file. (Return is then considered timely filed.)

e. Audit completed 8 months after the due date of the return. $100 additional tax found due.

f. Return showed $100 as the computed tax which was paid with the return.

The computation for the total amount due is shown below:

Computed tax after audit	$200	
Less tax paid with return	100	
Additional tax due	$100	
Penalty	5	(5% for audit deficiency. No penalty for failure to file.)
Interest	8	(8 months interest)
Total due	$113	

Example (f) — Audit on Late Filed Return No Pay Return

a. $100 claimed as tax on the return.

b. $100 in additional tax found due.

c. Return filed 3 months and 10 days after the due date.

d. Audit completed 8 months after the due date.

The computation for the total amount due is shown below:

Computed tax after audit	$200	
Penalty	20	(10% for failure to file)
Interest	16	(8 months interest)
Total due	$236	

701—10.7(421) Waiver of penalty—definitions. A penalty, if assessed, shall be waived by the department upon a showing of the circumstances stated below.

10.7(1) For purposes of these rules, the following definitions apply:

"Act of God" means an unusual and extraordinary manifestation of nature which could not reasonably be anticipated or foreseen and cannot be prevented by human care, skill, or foresight. There is a rebuttable presumption that an "act of God" that precedes the due date of the return or form by 30 days is not an act of God for purposes of an exception to penalty.

"Immediate family" includes the spouse, children, or parents of the taxpayer. There is a rebuttable presumption that relatives of the taxpayer beyond the relation of spouse, children, or parents of the taxpayer are not within the taxpayer's immediate family for purposes of the waiver exceptions.

"Sanctioned self-audit program" means an audit performed by the taxpayer with forms provided by the department as a result of contact by the department to the taxpayer prior to voluntary filing or payment of the tax. Filing voluntarily without contact by the department does not constitute a sanctioned self-audit.

"Serious, long-term illness or hospitalization" means an illness or hospitalization, documented by written evidence, which precedes the due date of the return or form by no later than 30 days and continues through the due date of the return or form and interferes with the timely filing of the return or form. There is a rebuttable presumption that an illness or hospitalization that precedes the due date of the return or form by more than 30 days is not an illness or hospitalization for purposes of an exception to penalty. The taxpayer will be provided an automatic extension of 30 days from the date the return or form is originally due or the termination of the serious, long-term illness or hospitalization whichever is later without incurring penalty. The taxpayer has the burden of proof on whether or not a serious, long-term illness or hospitalization has occurred.

"Substantial authority" means the weight of authorities for the tax treatment of an item is substantial in relation to the weight of authorities supporting contrary positions.

In determining whether there is substantial authority, only the following will be considered authority: applicable provisions of Iowa statutes; the Internal Revenue Code; Iowa administrative rules construing those statutes; court cases; administrative rulings; legal periodicals; department newsletters and tax return and deposit form instruction booklets; tax treaties and regulations; and legislative intent as reflected in committee reports.

Conclusions reached in treaties, legal opinions rendered by other tax professionals, descriptions of statutes prepared by legislative staff, legal counsel memoranda, and proposed rules and regulations are not authority.

There is substantial authority for the tax treatment of an item if there is substantial authority at the time the return containing the item is due to be filed or there was substantial authority on the last day of the taxable year to which the return relates.

The taxpayer must notify the department at the time the return, deposit form, or payment is originally due of the substantial authority the taxpayer is relying upon for not filing the return or deposit form or paying the tax due.

10.7(2) Reserved.

701—10.8(421) Penalty exceptions. Under certain circumstances the penalty for failure to timely file a return or deposit, failure to timely pay the tax shown due, or the tax required to be shown due with the filing of a return or a deposit form, or failure to pay following an audit by the department is waived.

When an exception is granted under subrule 10.9(1), the return or deposit form is considered timely filed for purposes of nonimposition of penalty only.

10.8(1) For failure to timely file a return or deposit form, the 10 percent penalty is waived upon a showing of the following exceptions:

a. At least 90 percent of the tax required to be shown due has been paid by the due date of the tax return or deposit form.

b. One late return allowed. A taxpayer required to file a return or deposit form quarterly, monthly, or semimonthly is allowed one untimely filed return or deposit form within a three-year period. The use by the taxpayer of any other penalty exception under this subrule will not count as a late return or deposit form for purposes of this subrule.

The exception for one late return in a three-year period is determined on the basis of the tax period for which the return or form is due and not the date on which the return is filed.

c. Death of a taxpayer, member of the immediate family of the taxpayer, or death of the person directly responsible for filing the return and paying the tax, when the death interferes with timely filing. There is a rebuttable presumption that a death which occurs more than 30 days before the original date the return or form is due does not interfere with timely filing.

d. The onset of serious, long-term illness or hospitalization of the taxpayer, a member of the taxpayer's immediate family, or the person directly responsible for filing the return and paying the tax.

e. Destruction of records by fire, flood, or act of God.

f. The taxpayer presents proof that the taxpayer at the due date of the return, deposit form, or payment relied upon applicable, documented, written advice made specifically to the taxpayer, the taxpayer's preparer, or to an association representative of the taxpayer from the department, state department of transportation, county treasurer, or federal Internal Revenue Service. The advice should be relevant to the agency offering the advice and not beyond the scope of the agency's area of expertise and knowledge. The advice must be current and not superseded by a court decision, ruling of a quasi-judicial body such as an administrative law judge, the director, or the state board of tax review, or by the adoption, amendment, or repeal of a rule or law.

g. Reliance upon the results of a previous audit was a direct cause for failure to file or pay where the previous audit expressly and clearly addressed the issue and the previous audit results have not been superseded by a court decision or by adoption, amendment, or repeal of a rule or law.

h. The taxpayer presents documented proof of substantial authority to rely upon a particular position or upon proof that all facts and circumstances are disclosed on a return or deposit form. Mathematical, computation, or transposition errors are not considered as facts and circumstances disclosed on a return or deposit form. These types of errors will not be considered as penalty exceptions.

i. The return, deposit form, or payment is timely, but erroneously, mailed with adequate postage to the Internal Revenue Service, another state agency, or a local government agency and the taxpayer provides proof of timely mailing with adequate postage. The taxpayer must provide competent evidence of the mailing as stated in Iowa Code section 622.105.

j. The tax has been paid by the wrong licensee and the payments were timely remitted to the department for one or more tax periods prior to notification by the department.

k. The failure to file was discovered through a sanctioned self-audit program conducted by the department.

10.8(2) For failure to timely pay the tax due on a return or deposit form, the 5 percent penalty is waived upon a showing of the following exceptions:

a. At least 90 percent of the tax required to be shown due has been paid by the due date of the tax return or deposit form.

b. The taxpayer voluntarily files an amended return and pays all tax shown to be due on the return prior to any contact by the department, except under a sanctioned self-audit program conducted by the department.

c. The taxpayer provides written notification to the department of a federal audit while it is in progress and voluntarily files an amended return which includes a copy of the federal document showing the final disposition or final federal adjustments within 60 days of the final disposition of the federal government's audit.

d. The taxpayer presents proof that the taxpayer relied upon applicable, documented, written advice specifically made to the taxpayer, to the taxpayer's preparer, or to an association representative of the taxpayer from the department, state department of transportation, county treasurer, or federal Internal Revenue Service, whichever is appropriate, that has not been superseded by a court decision, ruling by a quasi-judicial body, or the adoption, amendment, or repeal of a rule or law.

e. Reliance upon results in a previous audit was a direct cause for the failure to pay the tax required to be shown due where the previous audit expressly and clearly addressed the issue and the previous audit results have not been superseded by a court decision, or the adoption, amendment, or repeal of a rule or law.

f. The taxpayer presents documented proof of substantial authority to rely upon a particular position or upon proof that all facts and circumstances are disclosed on a return or deposit form. Mathematical, computation, or transposition errors are not considered as facts and circumstances disclosed on a return or deposit form. These types of errors will not be considered as penalty exceptions.

g. The return, deposit form, or payment is timely, but erroneously, mailed with adequate postage to the Internal Revenue Service, another state agency, or a local government agency and the taxpayer provides proof of timely mailing with adequate postage. The taxpayer must provide competent evidence of the mailing as stated in Iowa Code section 622.105.

h. The tax has been paid by the wrong licensee and the payments were timely remitted to the department for one or more tax periods prior to notification by the department.

10.8(3) For a deficiency of tax due on a return or deposit form found during an audit, the 5 percent penalty is waived under the following exceptions:

a. At least 90 percent of the tax required to be shown due has been paid by the due date.

b. The taxpayer presents proof that the taxpayer relied upon applicable, documented, written advice specifically made to the taxpayer, to the taxpayer's preparer, or to an association representative of the taxpayer from the department, state department of transportation, county treasurer, or federal Internal Revenue Service, whichever is appropriate, that has not been superseded by a court decision, ruling by a quasi-judicial body, or the adoption, amendment, or repeal of a rule or law.

c. Reliance upon results in a previous audit was a direct cause for the failure to pay the tax shown due or required to be shown due where the previous audit expressly and clearly addressed the issue and the previous audit results have not been superseded by a court decision, or the adoption, amendment, or repeal of a rule or law.

d. The taxpayer presents documented proof of substantial authority to rely upon a particular position or upon proof that all facts and circumstances are disclosed on a return or deposit form. Mathematical, computation, or transposition errors are not considered as facts and circumstances disclosed on a return or deposit form. These types of errors will not be considered as penalty exceptions.

701—10.9(421) Notice of penalty exception for one late return in a three-year period. The penalty exception for one late return in a three-year period will automatically be applied to a return or deposit form by the department if the taxpayer is eligible for the exception.

The exception for one late return in a three-year period is applied to the returns or deposit forms in the order they are processed and not in the order which the returns or deposit forms should have been filed.

701—10.10 to **10.19** Reserved.

RETAIL SALES

[Prior to 1/23/91, see 701—12.10(422,423) and 12.11(422, 423)]

701—10.20(422,423) Penalty and interest computation.

10.20(1) *Computations for tax periods where the due date occurs after December 31, 1980.* The filing of the tax return within the period prescribed by law and the payment of the tax required to be shown thereon are simultaneous acts and if either condition is not met, a penalty shall be assessed, unless it is shown that such failure was due to reasonable cause. Iowa Code section 422.58(1) provides a penalty for failure to file a permit holder's semimonthly or monthly tax deposit or a return or, if a permit holder fails to remit at least 90 percent of the tax due with the filing of the return or pay less than 90 percent of any tax required to be shown on the return, excepting the period between the completion of an examination of the books and records of a taxpayer and the giving of notice to the taxpayer that a tax or additional tax is due. The rate of penalty shall be 5 percent per month or fraction thereof, not to exceed 25 percent in the aggregate for failure to file a deposit or return and for failure to pay at least 90 percent of the tax due.

In case there is both a failure to file and a failure to pay, the penalty for failure to file shall be in lieu of the penalty for failure to pay. However, the imposition of the penalty for failure to file does not preclude the imposition of a penalty for failure to pay if, after the return is filed, there is a continued failure to

pay during the five-month period after the tax was due (taking into consideration any extensions of time to file and pay). The combined penalties for failure to file or pay shall not exceed 25 percent of the tax due. The penalties are computed on the amount of the tax remaining unpaid that is required to be shown as due on the return as distinguished from the amount of the tax shown to be due on the return. Therefore, if an audit results in an additional tax which was required to be shown as due on the return, the additional tax is subject to the penalty for failure to pay, unless the failure was due to reasonable cause. See 701—subrule 44.3(3) for examples of the penalty computation. These examples would also apply to sales and use tax unless 90 percent of the tax is remitted timely, then no penalty applies.

All payments shall be first applied to the penalty and then to the interest, and the balance, if any, to the amount of tax then due in the order specified.

In addition to the penalty, interest accrues on the tax or additional tax at the rate of three-fourths of one percent per month, counting each fraction of a month as an entire month, computed from the date the return or deposit was required to be filed until December 31, 1981. See rule 701—10.2(421) for the statutory interest rate commencing on or after January 1, 1982.

10.20(2) *Computations for tax periods for taxes initially due and payable on or after January 1, 1985, but before January 1, 1987.*

a. Penalty for failure to file return. Subsequent to December 31, 1984, a permit holder or other person who fails to file a semimonthly or monthly tax deposit form or a quarterly or annual return shall be subject to penalty for this failure only if the failure to file is willful. The penalty for willful failure to file a deposit form or return is 50 percent of the amount required to be shown on the deposit form or return, see Iowa Code section 422.58(1). When it is appropriate to impose this 50 percent penalty, it shall be in lieu of the penalty described in 701—subrule 12.10(4), paragraph *"b."*

b. Penalty for failure to timely remit tax. If a permit holder or other person fails to remit with the deposit form or pay with the return at least 90 percent of the tax due and owing, there shall be added to the amount of tax required to be shown on the deposit form or return a penalty of 10 percent of the tax due. Under Iowa Code section 422.58(1), the director cannot waive payment of this penalty. Thus, the equitable doctrine of waiver is not available to a permit holder or other person seeking relief from the penalty.

Also, that portion of the statute allowing the right to demonstrate that failure to timely pay has been due to reasonable cause has been repealed, House File 2507 supra. No statutory basis for remission of the 10 percent penalty now exists. Therefore, if it is shown that a fixed amount of tax was due to be paid upon a date certain and less than 90 percent of that amount has been paid, the director may not excuse payment of penalty. The penalty described in this subrule shall include a penalty for additional tax shown to be due and owing as the result of an audit. See 701—subrule 44.3(5) for examples which illustrate the computation of penalty for tax due on or after January 1, 1985.

c. Application of payments. All payments shall be first applied to penalty, then interest, and the balance, if any, to the amount of tax then due in the order specified. If penalty, interest, and tax are due and owing for more than one tax period, any payment shall be applied first to the penalty, then the interest, then the tax for the oldest tax period; then to the penalty, interest and tax to the period immediately subsequent, and so on until the payment is exhausted.

EXAMPLE: A permit holder is an annual filer. As a result of audit, it is determined that the permit holder owes penalty, interest, and tax for the years 1984, 1983, and 1982. The total amount owed for tax, penalty and interest for the three years is $1,200. $200 of this amount is tax for the year 1984. The permit holder remits a single payment of $1,000. The payment would be applied first to the penalty, then interest, then tax owing for 1982. The same application would then be made to penalty, interest and tax owing for 1983. Any amount remaining would be applied first to penalty and then interest owing for 1984. The $200 in tax due for the year 1984 would remain to be paid.

d. Computation of penalty for taxes initially due and payable prior to January 1, 1985, and overdue and payable on that date. The date upon which the tax initially became delinquent (taking into consideration any extension of time to pay the tax due) determines which penalty applied. If the initial delinquency occurs prior to January 1, 1985, the aggregating penalty applies. If the initial delinquency occurs on or after January 1, 1985, only the flat rate penalties of 5 or 10 percent apply.

10.20(3) *Computations for tax periods for taxes initially due and payable on or after January 1, 1987, but for tax periods ending before January 1, 1991.*

a. Penalty for failure to file return. Subsequent to December 31, 1986, a permit holder or other person who willfully fails to file a semimonthly or monthly tax deposit form or a quarterly or annual return will be subject to penalty for this failure. The penalty for willful failure to file a deposit form or return is 75 percent of the amount required to be shown on the deposit form or return, see Iowa Code section 422.58(1). When it is appropriate to impose this 75 percent penalty, it will be in lieu of the penalty described in paragraph 10.20(3)*"b."*

b. Penalty for failure to timely remit tax. If a permit holder or other person fails to remit with the deposit form or pay with the return at least 90 percent of the tax due and owing on or before the due date of the deposit or return, there will be added to the amount of tax required to be shown on the deposit form or return a penalty of 15 percent of the tax due. Under Iowa Code section 422.58(1), the director cannot waive payment of this penalty. Thus, the equitable doctrine of waiver is not available to a permit holder or other person seeking relief from the penalty.

Also, that portion of the statute allowing the right to demonstrate that failure to timely pay has been due to reasonable cause has been repealed. No statutory basis for remission of the 15 percent penalty now exists. Therefore, if it is shown that a fixed amount of tax was due to be paid upon a date certain and less than 90 percent of that amount has been paid, the director may not excuse payment of penalty. The penalty described in this subrule will include a penalty for additional tax shown to be due and owing as the result of an audit. See subrule 10.41(6) for examples which illustrate the computation of penalty for tax due on or after January 1, 1987, but for tax years ending before January 1, 1991.

c. Application of payments. All payments must be first applied to penalty, then interest, and the balance, if any, to the amount of tax then due in the order specified. See *Ashland Oil Inc. v. Iowa Department of Revenue and Finance*, 452 N.W.2d 162 (Iowa 1990). If penalty, interest, and tax are due and owing for more than one tax period, any payment must be applied first to the penalty, then the interest, then the tax for the oldest tax period; then to the penalty, interest, and tax to the period immediately subsequent, and so on until the payment is exhausted.

EXAMPLE: A permit holder is an annual filer. As a result of audit, it is determined that the permit holder owes penalty, interest, and tax for the years 1984, 1983, and 1982. The total amount owed for tax, penalty, and interest for the three years is $1,200. $200 of this amount is tax for the year 1984. The permit holder remits a single payment of $1,000. The payment would be applied first to the penalty, then interest, then tax owing for 1982. The same application would then be made to penalty, interest, and tax owing for 1983. Any amount remaining would be applied first to penalty and then interest owing for 1984. The $200 in tax due for the year 1984 would remain to be paid and would continue to accrue interest.

d. Computation of penalty for taxes initially due and payable prior to January 1, 1987, and overdue and payable on that date. The date upon which the tax initially became delinquent determines which penalty applied. If the initial delinquency occurs prior to January 1, 1987, the 10 percent penalty applies. If the initial delinquency occurs on or after January 1, 1987, but for tax periods ending before January 1, 1991, only the flat rate penalties of 7.5 or 15 percent apply. See rule 701—10.6(421) for penalty for tax periods beginning on or after January 1, 1991.

See rule 701—10.5(421) for statutory exemptions to penalty for tax due and payable on or after January 1, 1987. See rule 701—10.8(421) for exceptions to penalty for tax periods beginning on or after January 1, 1991.

This rule is intended to implement Iowa Code section 422.58(1).

701—10.21(422,423) Request for waiver of penalty. Any taxpayer who has good reason to object to any penalty imposed by the department for failure to timely file returns, monthly deposits or pay the tax may submit a request for waiver seeking that the penalty be waived for taxes initially due and payable prior to January 1, 1985. If it can be shown to the director's satisfaction that the failure was due to reasonable cause, the penalty will be adjusted accordingly. The request must be in the form of an affidavit and must contain all facts alleged as reasonable cause for the taxpayer's failure to file the return, monthly

deposit or pay the tax as required by law. The following are examples of situations that may be accepted by the director as being reasonable cause:

1. Where the return, monthly deposit or payment was filed on time, but filed erroneously with another state agency or the Internal Revenue Service.

2. A showing that the completed return, monthly deposit was mailed in time to reach the department in the normal course of mails, within the legal period. If the due date is a Saturday, Sunday or legal holiday, the following business day is within the legal period.

3. Where the delay was caused by death or serious illness of the taxpayer responsible for filing.

4. Where the delay was caused by prolonged unavoidable absence of the taxpayer responsible for filing.

5. Where the delinquency was caused by destruction by fire or other casualty of the taxpayer's records.

6. A showing that the delay or failure was due to erroneous information given the taxpayer by an employee of the department.

7. The department will allow without penalty one late return or monthly deposit, or one timely filed return containing a mathematical error if the taxpayer has had no reported delinquencies in the past 36 months. (Not applicable to penalty established by audit.)

8. Where the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return or monthly deposit within the prescribed time, then the delay is due to reasonable cause. A failure to pay will be considered to be due to reasonable cause to the extent that the taxpayer has made a satisfactory showing that ordinary business care and prudence were exercised in providing for payment of the taxpayer's liability and was nevertheless either unable to pay the tax or would suffer an undue hardship if the taxpayer paid on the due date. What constitutes ordinary business care and prudence must be determined by the particular facts of a particular case, *Armstrong's Inc. v. Iowa Department of Revenue*, 320 N.W.2d 623 (Iowa 1982).

A request for waiver of penalty on an assessment will be treated as timely filed with the department, if filed no later than 30 days following the date of the notice of assessment. See rule 701—11.6(422,423) regarding notices of adjustment and assessment.

This rule is intended to implement Iowa Code sections 422.58 and 423.18.

701—10.22 to **10.29** Reserved.

USE
[Prior to 1/23/91, see 701—30.10(423)]

701—10.30(423) Penalties for late filing of a monthly tax deposit or use tax returns. Use tax monthly deposits shall be filed on or before the twentieth of the month following the month in which the tax was collected. Use tax quarterly returns shall be required to be filed on or before the last day of the month following the close of each quarterly period.

10.30(1) For taxes initially due and payable prior to January 1, 1985, failure to file a monthly deposit or use tax return or a corrected return or to pay use tax due on or before the due date shall result in a delinquent deposit or return and be subject to penalty and interest. See subrules 10.20(1), 10.20(2), and 10.20(3) for computation of penalty.

10.30(2) For taxes initially due and payable on or after January 1, 1985, but before January 1, 1987, only willful failure to file a monthly deposit or use tax return or a corrected return will be subject to penalty. Persons who fail to timely pay use tax are subject to a penalty which cannot be waived by the director and may not be excused for reasonable cause. If the person who fails to timely pay use tax is a retailer maintaining a place of business in this state, the penalty for failure to pay will be 10 percent of the tax required to be paid. Rule 701—30.1(423) describes in detail the persons who are subject to this 10 percent penalty. For any person who is not a retailer, the penalty for failure to timely pay use tax is 5 percent of the tax required to be paid.

See rule 10.20(422,423) for computation of penalty and interest before January 1, 1991. See rule 701—10.6(421) for penalty for tax periods beginning on or after January 1, 1991.

10.30(3) For taxes initially due and payable on or after January 1, 1987, but for tax periods ending before January 1, 1991, only willful failure to file a monthly deposit or use tax return or a corrected return will be subject to penalty. Persons who fail to timely pay use tax are subject to a penalty which cannot be waived by the director and may not be excused for reasonable cause. If the person who fails to timely pay use tax is a retailer maintaining a place of business in this state, the penalty for failure to pay is 15 percent of the tax required to be paid. Rule 701—30.1(423) describes in detail the persons who are subject to this 15 percent penalty. For any person who is not a retailer, the penalty for failure to timely pay use tax is 7.5 percent of the tax required to be paid. See rule 701—10.5(421) for statutory exemptions to penalty for taxes due and payable on or after January 1, 1987, but for tax periods ending before January 1, 1991. See rule 10.20(422,423) for computation of penalty and interest for taxes due and payable on or after January 1, 1987, but for tax periods ending before January 1, 1991. See rule 701—10.6(421) for penalty for tax periods beginning on or after January 1, 1991.

This rule is intended to implement Iowa Code sections 422.58 and 423.18.

701—10.31 to **10.39** Reserved.

INDIVIDUAL INCOME
[Prior to 1/23/91, see 44.1(422), 44.3(422), 44.7(422) and 44.8(422)]

701—10.40(422) General rule. Rescinded IAB 11/24/04, effective 12/29/04.

701—10.41(422) Computation for tax payments due on or after January 1, 1981, but before January 1, 1982. Rescinded IAB 11/24/04, effective 12/29/04.

701—10.42(422) Interest commencing on or after January 1, 1982. Rescinded IAB 11/24/04, effective 12/29/04.

701—10.43(422) Request for waiver of penalty. Rescinded IAB 11/24/04, effective 12/29/04.

701—10.44 to **10.49** Reserved.

WITHHOLDING
[Prior to 1/23/91, see 701—46.5(422)]

701—10.50(422) Penalty and interest. Rescinded IAB 11/24/04, effective 12/29/04.

701—10.51 to **10.55** Reserved.

CORPORATE
[Prior to 1/23/91, see subrule 701—52.5(3) and rule 701—52.10(422)]

701—10.56(422) and **10.57(422) Penalty and interest.** Rescinded IAB 11/24/04, effective 12/29/04.

701—10.58(422) Waiver of penalty and interest. Rescinded IAB 11/24/04, effective 12/29/04.

701—10.59 to **10.65** Reserved.

FINANCIAL INSTITUTIONS
[Prior to 1/23/91, see 701—58.6(422)]

701—10.66(422) Penalty and interest. Rescinded IAB 11/24/04, effective 12/29/04.

701—10.67 to **10.70** Reserved.

MOTOR FUEL
[Prior to 1/23/91, see 701—63.8(324) and 63.10(324)]

701—10.71(421) Penalty and enforcement provisions.

10.71(1) *Illegal use of dyed fuel.* The illegal use of dyed fuel in the supply tank of a motor vehicle shall result in a civil penalty assessed against the owner or operator of the motor vehicle as follows:

a. A $200 fine for the first violation.

b. A $500 fine for a second violation within three years of the first violation.

c. A $1,000 fine for third and subsequent violations within three years of the first violation.

10.71(2) *Illegal importation of untaxed fuel.* A person who illegally imports motor fuel or undyed special fuel without a valid importer's license or supplier's license shall be assessed a civil penalty as stated below. However, the owner or operator of the importing vehicle shall not be guilty of violating the illegal import provision if it is shown by the owner or operator that the owner or operator reasonably did not know or reasonably should not have known of the illegal importation.

a. For a first violation, the importing vehicle shall be detained and a fine of $2,000 shall be paid before the vehicle will be released. The owner or operator of the importing vehicle or the owner of the fuel may be held liable for payment of the fine.

b. For a second violation, the importing vehicle shall be detained and a fine of $5,000 shall be paid before the vehicle will be released. The owner or operator of the importing vehicle or the owner of the fuel may be held liable to pay the fine.

c. For third and subsequent violations, the importing vehicle and the fuel shall be seized and a fine of $10,000 shall be paid before the vehicle will be released. The owner or operator of the importing vehicle or the owner of the fuel may be held liable to pay the fine.

d. If the owner or operator of the importing vehicle or the owner of the fuel fails to pay the tax and fine for a first or second offense, the importing vehicle and the fuel may be seized. The Iowa department of revenue, the Iowa department of transportation, or any peace officer, at the request of either department, may seize the vehicle and the fuel.

e. If the operator or owner of the importing vehicle or the owner of the fuel moves the vehicle or the fuel after the vehicle has been detained and a sticker has been placed on the vehicle stating that "this vehicle cannot be moved until the tax, penalty, and interest have been paid to the department of revenue," an additional penalty of $5,000 shall be assessed against the operator or owner of the importing vehicle or the owner of the fuel.

10.71(3) *Improper receipt of fuel credit or refund.* If a person files an incorrect refund claim, in addition to the amount of the excess claim, a penalty of 10 percent shall be added to the amount by which the amount claimed and refunded exceeds the amount actually due and shall be paid to the department. If a person knowingly files a fraudulent refund claim with the intent to evade the tax, the penalty shall be 75 percent in lieu of the 10 percent. The person shall also pay interest on the excess refunded at the rate per month specified in Iowa Code section 421.7, counting each fraction of a month as an entire month, computed from the date the refund was issued to the date the excess refund is repaid to the state.

10.71(4) *Illegal heating of fuel.* The deliberate heating of taxable motor fuel or special fuel by dealers prior to consumer sale is a simple misdemeanor.

10.71(5) *Prevention of inspection.* The Iowa department of revenue or the Iowa department of transportation may conduct inspections for coloration, markers, and shipping papers at any place where taxable fuel is or may be loaded into transport vehicles, produced, or stored. Any attempts by a person to prevent, stop, or delay an inspection of fuel or shipping papers by authorized personnel shall be subject to a civil penalty of not more than $1,000 per occurrence. Any law enforcement officer requested by the Iowa department of revenue or Iowa department of transportation may physically inspect, examine, or otherwise search any tank, fuel supply tank of a vehicle, reservoir, or other container that can or may be used for the production, storage, or transportation of any type of fuel.

10.71(6) *Failure to conspicuously label a fuel pump.* A retailer who does not conspicuously label a pump or other delivery facility as required by the Internal Revenue Service, that dispenses dyed diesel

fuel so as to notify customers that it contains dyed fuel, shall pay to the department of revenue a penalty of $100 per occurrence.

10.71(7) *False or fraudulent return.* Any person, including an officer of a corporation or a manager of a limited liability company, who is required to make, render, sign, or verify any report or return required by this chapter and who makes a false or fraudulent report, or who fails to file a report or return with the intent to evade the tax, shall be guilty of a fraudulent practice. Any person who aids, abets, or assists another person in making any false or fraudulent return or false statement in any return with the intent to evade payment of tax shall be guilty of a fraudulent practice.

This rule is intended to implement 1995 Iowa Acts, chapter 155, section 36.

701—10.72(452A) Interest. Interest at the rate of three-fourths of one percent per month, based on the tax due, shall be assessed against the taxpayer for each month such tax remains unpaid prior to January 1, 1982. The interest shall accrue from the date the return was required to be filed. Interest shall not apply to penalty. Each fraction of a month shall be considered a full month for the computation of interest. See rule 701—10.2(421) for the statutory interest rate commencing on or after January 1, 1982.

Refunds on reports or returns filed on or after July 1, 1986, but before July 1, 1997, will accrue interest beginning on the first day of the third calendar month following the date of payment or the date the return was filed or due to be filed, whichever is later, at the rate in effect under Iowa Code section 421.7, counting each fraction of a month as an entire month. Refunds on reports or returns filed on or after July 1, 1997, will accrue interest beginning on the first day of the second calendar month following the date of payment or the date the return was filed or due to be filed, whichever is later. Claims for refund filed under Iowa Code sections 452A.17 and 452A.21 will accrue interest beginning with the first day of the second calendar month following the date the refund claim is received by the department. See rule 10.3(422,450,452A).

This rule is intended to implement Iowa Code section 452A.65 as amended by 1997 Iowa Acts, House File 266.

701—10.73 to **10.75** Reserved.

CIGARETTES AND TOBACCO

[Prior to 1/23/91, see 701—81.8(98), 81.9(98), and 81.15(98)]

701—10.76(453A) Penalties.

10.76(1) *Cigarettes.* The following is a list of offenses which subject the violator to a penalty:

1. The failure of a permit holder to maintain proper records;
2. The sale of taxable cigarettes without a permit;
3. The filing of a late, false or incomplete report with the intent to evade tax by a cigarette distributor, distributing agent or wholesaler;
4. Acting as a distributing agent without a valid permit; and
5. A violation of any provision of Iowa Code chapter 453A or these rules.

Penalties for these offenses are as follows:

- A $200 penalty for the first violation.
- A $500 penalty for a second violation within three years of the first violation.
- A $1,000 penalty for a third or subsequent violation within three years of the first violation.

Penalties for possession of unstamped cigarettes are as follows:

- A $200 penalty for the first violation if a person is in possession of more than 40 but not more than 400 unstamped cigarettes.
- A $500 penalty for the first violation if a person is in possession of more than 400 but not more than 2,000 unstamped cigarettes.
- A $1,000 penalty for the first violation if a person is in possession of more than 2,000 unstamped cigarettes for violations occurring prior to July 1, 2004. A $25 per pack penalty for the first violation if a person is in possession of more than 2,000 unstamped cigarettes for violations occurring on or after July 1, 2004.

- For a second violation within three years of the first violation, the penalty is $400 if a person is in possession of more than 40 but not more than 400 unstamped cigarettes; $1,000 if a person is in possession of more than 400 but not more than 2,000 unstamped cigarettes; and $2,000 if a person is in possession of more than 2,000 unstamped cigarettes for violations occurring prior to July 1, 2004. A $35 per pack penalty applies if a person is in possession of more than 2,000 unstamped cigarettes for violations occurring on or after July 1, 2004.
- For a third or subsequent violation within three years of the first violation, the penalty is $600 if a person is in possession of more than 40 but not more than 400 unstamped cigarettes; $1,500 if a person is in possession of more than 400 but not more than 2,000 unstamped cigarettes; and $3,000 if a person is in possession of more than 2,000 unstamped cigarettes for violations occurring prior to July 1, 2004. A $45 per pack penalty applies if a person is in possession of more than 2,000 unstamped cigarettes for violations occurring on or after July 1, 2004.

See rule 701—10.6(421) for penalties related to failure to timely file a return, failure to timely pay the tax due, audit deficiency, and willful failure to file a return with the intent to evade the tax. If, upon audit, it is determined that any person has failed to pay at least 90 percent of the tax imposed by Iowa Code chapter 453A, division I, which failure was not the result of a violation enumerated above, a penalty of 5 percent of the tax deficiency shall be imposed. This penalty is not subject to waiver for reasonable cause.

See rule 701—10.8(421) for statutory exceptions to penalty.

10.76(2) *Tobacco.*

See rule 701—10.6(421) for penalties related to failure to timely file a return, failure to timely pay the tax due, audit deficiency, and willful failure to file a return with the intent to evade the tax.

See rule 701—10.8(421) for statutory exceptions to penalty.

This rule is intended to implement Iowa Code sections 453A.28, 453A.31 and 453A.46 as amended by 2004 Iowa Acts, Senate File 2296.

701—10.77(453A) Interest.

10.77(1) *Cigarettes.* There shall be assessed interest at the rate established by rule 701—10.2(421) from the due date of the tax to the date of payment counting each fraction of a month as an entire month. For the purpose of computing the due date of any unpaid tax, a FIFO inventory method shall be used for cigarettes and stamps. See rule 701—10.6(421) for examples of penalty and interest.

10.77(2) *Tobacco.* The interest rate on delinquent tobacco tax is the rate established by rule 701—10.2(421) counting each fraction of a month as an entire month. If an assessment for taxes due is not allocated to any given month, the interest shall accrue from the date of assessment. See rule 701—10.6(421) for examples of penalty and interest.

This rule is intended to implement Iowa Code sections 453A.28 and 453A.46.

701—10.78(453A) Waiver of penalty or interest. Rescinded IAB 11/10/04, effective 12/15/04.

701—10.79(453A) Request for statutory exception to penalty. Any taxpayer who believes there is a good reason to object to any penalty imposed by the department for failure to timely file returns or pay the tax may submit a request for exception seeking that the penalty be waived. The request must be in the form of a letter or affidavit and must contain all facts alleged by the taxpayer and a reason for why the taxpayer qualifies for the exceptions. See rule 701—10.8(421).

This rule is intended to implement Iowa Code sections 453A.31 and 453A.46.

701—10.80 to **10.84** Reserved.

INHERITANCE

[Prior to 1/23/91, see 701—subrules 86.2(14) to 86.2(20)]

701—10.85(422) Penalty—delinquent returns and payment. This subrule only applies to returns and taxes due and payable prior to January 1, 1985. Effective for estates of decedents dying on or after

January 1, 1981, a penalty of 5 percent per month, not to exceed 25 percent in the aggregate, is imposed for failure to file the return or failure to pay 90 percent of the tax required to be shown as due within the time prescribed by law (taking into consideration any extensions of time to file and pay), unless failure is due to reasonable cause. In case there is both a failure to file and a failure to pay, the penalty for failure to file shall be in lieu of the penalty for failure to pay. A request for waiver of penalty must be in writing and submitted to the Iowa Department of Revenue, Hoover State Office Building, Des Moines, Iowa 50319 and must identify the estate and set forth the reasons for the failure. Delinquent returns draw interest at the rate of 8 percent per annum until December 31, 1981. See rule 701—10.2(421) for the statutory interest rate commencing on or after January 1, 1982. All payments are first credited to penalty and interest and the balance, if any, to the tax due. For estates of decedents dying prior to January 1, 1981, all tax not paid within the time prescribed by law (taking into consideration any extensions of time to file and pay) shall draw interest at the rate of 8 percent per annum until December 31, 1981. See rule 701—10.2(421) for the statutory interest rate commencing on or after January 1, 1982. There is no penalty for failure to file and pay the tax for estates of decedents dying prior to January 1, 1981.

10.85(1) *What constitutes reasonable cause.* This subrule only applies to returns and taxes due and payable prior to January 1, 1985. What constitutes reasonable cause for failure to timely file the return and pay the tax due depends on the facts and circumstances in each particular case. Factors which tend to establish reasonable cause are, but not limited to:

a. When the return and payment of the tax was timely filed, but filed erroneously with the Internal Revenue Service or another state agency.

b. When the return and payment were timely mailed, but were not received by the department until after the due date (if the due date falls on a Saturday, Sunday or holiday, the due date shall be the next day which is not a Saturday, Sunday or holiday).

c. When the delay was caused by the death or serious illness of the taxpayer.

d. When the delay was caused by the prolonged unavoidable absence of the taxpayer.

e. When the delay was caused by the destruction of the taxpayer's records due to fire or other unavoidable casualty.

f. When the taxpayer has good reason to believe that the gross share of none of the heirs, beneficiaries, transferees or joint tenants is of a sufficient amount for a tax to be owing.

g. When the taxpayer exercised ordinary business care and prudence in providing for the timely filing of the return and payment of the tax due. What constitutes ordinary business care and prudence must be determined by the particular facts and circumstances in each case. See *Armstrong v. Department of Revenue,* 320 N.W.2d 623 (Iowa 1982).

10.85(2) *What does not constitute reasonable cause.* This subrule only applies to returns and taxes due and payable prior to January 1, 1985. Factors which do not tend to establish reasonable cause are, but not limited to:

a. Lack of sufficient liquid assets to timely pay the tax due and file the return, when the taxpayer had ample time to request an extension of time to file the return and pay the tax, but failed to do so.

b. Failure to exercise ordinary business care and prudence in providing for the filing of the return and payment of the tax liability within the time prescribed by law.

10.85(3) *Interest—during an extension of time.* During the period of an extension of time, any unpaid tax shall draw interest at the rate of 6 percent per annum until December 31, 1981. See rule 701—10.2(421) for the statutory interest rate commencing on or after January 1, 1982. Payments made during an extension of time shall first be credited to interest and the balance, if any, to the tax due. See *Ashland Oil Co. v. Iowa Department of Revenue and Finance,* 452 N.W.2d 162 (Iowa 1990). Any outstanding tax obligation remaining after the expiration of an extension of time shall be deemed delinquent and shall be subject to penalty and draw interest at the rate of 8 percent per annum from the date of the extension expiration until paid, if paid on or before December 31, 1981. See rule 701—10.2(421) for the statutory interest rate commencing on or after January 1, 1982.

10.85(4) *Computation of interest.* Beginning May 1, 1985, interest accruing on tax due and on refunds of excessive tax paid is computed on a calendar monthly basis with each fraction of a month considered a full month. Interest accrued through April 30, 1985, both on tax due and on refunds of

excessive tax paid, is computed on a daily basis using a 365-day year. If interest accrues for periods of time both before and after May 1, 1985, the rule applicable for the respective period of time before and after May 1, 1985, shall govern the interest computation.

This subrule can be illustrated by the following:

EXAMPLE:

For the purpose of illustration only the interest rate used for 1985 is 10 percent per year or 0.8 percent per month. The original due date of January 15, 1985, was extended to May 31, 1985. The tax due is $100. The amount due for tax and interest is $103.68 with interest computed through May 31, 1985. The interest is computed as follows:

1. Interest from January 15, 1985, through April 30, 1985 (105 days) is computed on a daily basis.

$$\$100 \text{ times } 10\% \text{ times } \frac{105}{365} = \$2.88$$

2. Interest for May 1985 (one month) is computed on a monthly basis.
   $100 times .8% times 1 = $.80
3. Total interest is $3.68 ($2.88 plus $.80)

In this example interest is charged for the full month of May even though the tax and interest may be paid anytime during the month.

10.85(5) *Penalty—failure to pay the tax due on or after January 1, 1985, but before January 1, 1987.* Effective for tax due and payable on or after January 1, 1985, the cumulative dual penalties for failure to timely file the return and pay 90 percent of the tax required to be shown as due, without reasonable cause, are abolished. In lieu of the dual penalties, a single noncumulative penalty of 5 percent is imposed for failure to timely pay at least 90 percent of the tax due with the filing of the return. The 5 percent penalty is computed on the amount of the tax that is required to be shown as due (as distinguished from tax shown to be due) that is not timely paid, taking into consideration any extensions of time granted to pay the tax due. Reasonable cause for the delinquency is not relevant. The fact the tax is delinquent alone determines the imposition of the penalty. The director cannot waive the penalty.

While the penalty for failure to file the return is abolished, the duty of the personal representative and the taxpayer, as defined in Iowa Code section 450.5, to file the return and pay the tax due remains in full force and effect. The noncumulative penalty of 5 percent only applies to tax that is initially due and payable (taking into consideration any extensions of time granted to file the return and pay the tax due) after December 31, 1984.

However, the repeal of the cumulative penalties for tax that is initially delinquent after December 31, 1984, does not preclude the imposition of the cumulative penalties for failure to timely file or pay 90 percent of the tax due, if the tax was initially delinquent prior to January 1, 1985, even though the delinquency continues for periods of time after December 31, 1984. When the tax initially became delinquent (taking into consideration any extensions of time granted to file the return and pay the tax due) determines which penalty applies. If the initial delinquency occurs prior to January 1, 1985, the cumulative penalties apply. If the initial delinquency occurs after December 31, 1984, only the noncumulative penalty of 5 percent applies.

10.85(6) *Penalty—failure to pay the tax due on or after January 1, 1987, but for deaths occurring before January 1, 1991.* A penalty of 7.5 percent is imposed for failure to timely pay at least 90 percent of the tax due with the filing of the return. The 7.5 percent penalty is computed on the amount of tax that is required to be shown due (as distinguished from the tax shown due) that is not timely paid, taking into consideration any extensions of time granted to pay the tax due. Reasonable cause for the delinquency is not relevant. The fact the tax is delinquent alone determines the imposition of the penalty. The director cannot waive the penalty.

While the penalty for failure to file the return is abolished, the duty of the personal representative and the taxpayer as defined in Iowa Code section 450.5 to file a return and pay the tax due remains in full force and effect.

See rule 701—10.5(421) for statutory exceptions to penalty for tax due and payable on or after January 1, 1987, but for deaths occurring before January 1, 1991. See rule 701—10.8(421) for statutory exceptions for deaths occurring on or after January 1, 1991.

701—10.86 to **10.89** Reserved.

IOWA ESTATE
[Prior to 1/23/91, see 701—subrules 87.3(9) to 87.3(12)]

701—10.90(451) Penalty—delinquent return and payment. This rule applies only to Iowa estate tax due and payable prior to January 1, 1985. Effective for estates of decedents dying on or after January 1, 1981, a penalty of 5 percent per month, not to exceed 25 percent in the aggregate, is imposed for failure to file the return or failure to pay the tax due within the time prescribed by law (taking into consideration any extensions of time to file and pay), unless the failure is due to reasonable cause. In case there is both a failure to file and a failure to pay, the penalty for failure to file shall be in lieu of the penalty for failure to pay. The penalty imposed is based on the tax due and is in addition to the penalties imposed by Iowa Code chapter 450 for failure to file or pay the inheritance tax due. A request for waiver of penalty must be in writing and submitted to Fiduciary and Inheritance Tax Processing, P.O. Box 10467, Des Moines, Iowa 50306, and must identify the estate and set forth the reasons for the failure. All tax not paid within the time prescribed by law (taking into consideration any extensions of time to pay) draws interest at the rate of 8 percent per annum. All payments are first credited to penalty and interest and the balance, if any, to the tax due. See *Ashland Oil Co. v. Iowa Department of Revenue and Finance*, 452 N.W.2d 162 (Iowa 1990). For estates of decedents dying prior to January 1, 1981, all tax not paid within the time prescribed by law (taking into consideration any extensions of time to file and pay) shall draw interest at the rate of 8 percent per annum. There is no penalty for failure to file and pay the tax for estates of decedents dying prior to January 1, 1981. For interest accruing after January 1, 1982, see rule 701—10.2(421) for the statutory interest rate.

10.90(1) *What constitutes reasonable cause.* This subrule applies only to Iowa estate tax due and payable prior to January 1, 1985. What constitutes reasonable cause for failure to timely file the return and pay the tax due depends on the facts and circumstances in each particular case. Factors which tend to establish reasonable cause are, but not limited to:

a. When the return and payment of the tax was timely filed, but filed erroneously with the Internal Revenue Service or another state agency.

b. When the return and payment were timely mailed, but were not received by the department until after the due date (if the due date falls on a Saturday, Sunday or holiday, the due date shall be the next day which is not a Saturday, Sunday or holiday).

c. When the delay was caused by the death or serious illness of the taxpayer.

d. When the delay was caused by the prolonged unavoidable absence of the taxpayer.

e. When the delay was caused by the destruction of the taxpayer's records due to fire or other unavoidable casualty.

f. When no Iowa estate tax was shown to be due when the federal estate tax return was filed and the taxpayer had reasonable cause to believe none was due, but then as a result of either a federal audit or an audit of the inheritance tax return, an estate tax, or additional estate tax, was due.

g. When the taxpayer exercised ordinary business care and prudence in providing for the timely filing of the return and payment of the tax due. What constitutes ordinary business care and prudence must be determined by the particular facts and circumstances in each case. See *Armstrong v. Department of Revenue*, 320 N.W.2d 623 (Iowa 1982).

10.90(2) *What does not constitute reasonable cause.* This subrule applies only to Iowa estate tax due and payable prior to January 1, 1985. Factors which do not tend to establish reasonable cause are, but not limited to:

Failure to exercise ordinary business care and prudence in providing for the filing of the return and payment of the tax liability within the time prescribed by law.

10.90(3) *Penalty—failure to pay the tax due on or after January 1, 1985.* Department of revenue subrules 10.85(5) and 10.85(6) implementing the penalty for failure to timely pay the inheritance tax due are also the rules implementing the penalty for failure to pay the Iowa estate tax due. See rule 701—10.6(421) for penalty for failure to pay the tax due for deaths occurring on or after January 1, 1991.

701—10.91 to **10.95** Reserved.

GENERATION SKIPPING
[Prior to 1/23/91, see 701—subrules 88.3(14) and 88.3(15)]

701—10.96(450A) Penalty—delinquent return and payment for deaths occurring before January 1, 1991. Effective for generation skipping transfers which are eligible for the federal credit for state generation skipping transfer tax under Section 2604 of the Internal Revenue Code, a penalty of 7.5 percent of the tax due is imposed for failure to pay at least 90 percent of the tax due on or before the date prescribed for payment, taking into consideration any extension of time granted to pay the tax due. The penalty imposed cannot be waived by the director. However, penalty cannot be imposed if any of the five exceptions enumerated in Iowa Code section 421.27 are established by the taxpayer. The term "tax due" means the correct amount of tax due which may, due to an audit or an adjustment in the amount of the federal generation skipping transfer tax, be a different amount than the tax shown as due on the return. If a penalty is applicable, it is computed on the amount of the tax that has not been timely paid, taking into consideration any extension of time granted to pay the tax due. See rule 701—10.6(421) for penalty for delinquent return and payment of tax due for deaths occurring on or after January 1, 1991.

701—10.97(422) Interest on tax due. All tax which has not been paid on or before the last day of the ninth month following the death of the individual whose death is the event imposing the federal generation skipping transfer tax draws interest at the rate prescribed by Iowa Code section 421.7, to be computed on a monthly basis with each fraction of a month counted as a full month. See rule 701—10.2(421) for the interest rate to use for a specific calendar year. Interest applies equally to tax that is delinquent and tax that is due under an extension of time to pay.

701—10.98 to **10.100** Reserved.

FIDUCIARY INCOME
[Prior to 1/23/91, see 701—89.6(422) and 89.7(422)]

701—10.101(422) Penalties.

10.101(1) *Negligence penalty—delinquent returns and payment.* This subrule is only applicable to tax that is due and payable prior to January 1, 1985. Effective for fiduciary income tax returns and tax due on or after January 1, 1981, a penalty of 5 percent per month, not to exceed 25 percent in the aggregate, is imposed for failure to file a fiduciary income tax return or to pay the tax required to be shown as due, within the time prescribed by law (taking into consideration any extensions of time to file and pay), unless the failure is due to reasonable cause. In case there is both a failure to file and a failure to pay, the penalty for failure to file shall be in lieu of the penalty for failure to pay. However, the imposition of the penalty for failure to file does not preclude the imposition of a penalty for failure to pay if, after the return is filed, there is a continued failure to pay during the five-month period after the tax was due (taking into consideration any extensions of time to file and pay). The combined penalties for failure to file or to pay shall not exceed 25 percent of the tax due. The penalties are computed on the amount of the tax remaining unpaid that is required to be shown as due on the return as distinguished from the amount of the tax shown to be due on the return. Therefore, if an audit of a fiduciary return results in an additional tax which was required to be shown as due on the return, the additional tax is subject to the penalty for failure to pay, unless the failure was due to reasonable cause. See rules 10.40(422) and 10.41(422) for individual income tax penalties and subrule 10.41(2) for examples of penalty computation for tax periods

ending before January 1, 1991. See rule 701—10.6(421) for individual income tax penalties and subrule 10.6(5) for examples of penalty computation for tax periods beginning on or after January 1, 1991.

10.101(2) *Fraud penalty for tax returns ending before January 1, 1991.* If the failure to file the fiduciary income tax return is willful or deliberate with the intention of evading tax or if a false return is willfully or deliberately filed for the purpose of evading the correct tax due, a penalty of 50 percent of the amount of the tax required to be shown as due is imposed. The penalty for fraud shall be in lieu of the penalties provided in subrule 10.101(1).

10.101(3) *Waiver of penalty.* This subrule is only applicable to tax that is due and payable prior to January 1, 1985. A request for waiver of penalty must be in writing, in the form of an affidavit, and be submitted to Fiduciary and Inheritance Tax Processing, P.O. Box 10467, Des Moines, Iowa 50306. It must identify the fiduciary income tax return, the taxable year for which the delinquency occurred and state the reasons for the failure. It is not sufficient for the taxpayer to simply establish that the failure was not willful. The reasons why the failure was reasonable must also be established. The affidavit must contain the facts on which a conclusion can be reached that the penalty should be waived. A mere statement of conclusions is not sufficient. See rule 701—10.8(421) for exceptions to penalty for tax periods beginning on or after January 1, 1991.

10.101(4) *Reasonable cause.* This subrule is only applicable to tax that is due and payable prior to January 1, 1985. What constitutes reasonable cause for failure to timely file the fiduciary return and pay the tax due depends on the facts and circumstances in each particular case. Factors which tend to establish reasonable cause include, but are not limited to:

a. The return filing and payment were timely, but erroneously submitted to the Internal Revenue Service or another state agency.

b. When the return and payment were mailed on or before the due date, but were not received by the department until after the due date. If the due date falls on a Saturday, Sunday or holiday, the due date is the next day which is not a Saturday, Sunday or holiday. See Iowa Code section 622.106 for what constitutes proof of the mailing date.

c. The estate's right to the income is subject to litigation and the personal representative of the estate either has not received the income, or is prohibited from disbursing the income received.

d. The condition of the decedent's books and records prevent the compilation of the data necessary to file a return.

e. The delay was caused by the death or serious illness of the taxpayer.

f. The delay was caused by the prolonged unavoidable absence of the taxpayer.

g. The delay was caused by the destruction of the taxpayer's records due to fire or other unavoidable casualty.

h. Ordinary business care and prudence was exercised to provide for the timely filing of the return and payment of the tax due, but the filing or payment was nevertheless delinquent. What constitutes ordinary business care and prudence must be determined by the particular facts and circumstances in each case. See *Armstrong v. Department of Revenue,* 320 N.W.2d 623 (Iowa 1982).

10.101(5) *What does not constitute reasonable cause.* This subrule is only applicable to tax that is due and payable prior to January 1, 1985. Factors which do not tend to establish reasonable cause include, but are not limited to:

Failure to exercise the generally accepted standards of fiduciary responsibility in providing for the timely filing of the return and payment of the tax due.

10.101(6) *Interest cannot be waived.* Interest due on unpaid tax is not a penalty, but rather it is compensation to the government for the period it was deprived of the use of money. Therefore, interest due cannot be waived. *Vick v. Phinney,* 414 F.2d 444, 448 (5th CA 1969); *Time, Inc. v. United States,* 226 F.Supp. 680, 686 (S.D. N.Y. 1964); *In Re Jeffco Power Systems,* Dep't of Revenue Hearing Officer decision, Docket No. 77-9-6A-A (1978).

701—10.102(422) Penalty. Tax due and payable after December 31, 1984, but for tax periods ending before January 1, 1991. See subrules 10.41(3) to 10.41(6) for the penalty for tax that is due and payable after December 31, 1984, but for tax periods ending before January 1, 1991.

This rule is intended to implement Iowa Code sections 4.1, 422.25, 622.106, and 1990 Iowa Acts, chapter 1172. See rule 701—10.6(421) for penalty for tax periods beginning on or after January 1, 1991.

701—10.103(422) Interest on unpaid tax. Tax not paid within the time prescribed by law, including the period during an extension of time, draws interest at the rate of three-fourths of one percent per month for each month, or fraction of a month, that the tax liability remains unpaid until December 31, 1981. See rule 701—10.2(421) for the statutory interest rate commencing on or after January 1, 1982. Payments made are first credited to penalty and interest due and then to the tax liability. See *Ashland Oil Co. v. Iowa Department of Revenue and Finance*, 452 N.W.2d 162 (Iowa 1990).

701—10.104 to **10.109** Reserved.

HOTEL AND MOTEL
[Prior to 1/23/91, see 701—104.8(422A) and 104.9(422A)]

701—10.110(423A) Interest and penalty.

10.110(1) *Computation for tax due after December 31, 1979, but before January 1, 1985.* The filing of the tax return within the period prescribed by law and the payment of the tax required to be shown thereon are simultaneous acts and if either condition is not met, a penalty shall be assessed. Section 422.58(1) of the Iowa Code provides a penalty for failure to file a permitholder's monthly tax deposit or a return or, if a permitholder fails to remit at least 90 percent of the tax due with the filing of the return or pay less than 90 percent of any tax required to be shown on the return. Only the penalty for a failure to file a return will be added when both a failure to file a return and a failure to remit at least 90 percent of the tax due or to pay less than 90 percent of the tax required to be shown on the return occurs. The penalty for failure to pay at least 90 percent of the tax due is 5 percent of the tax due. Penalty is computed on the amount required to be shown as tax with the filing of the deposit or return. For purposes of computing the penalty in case of failure to file or to pay at least 90 percent of the amount of tax required to be shown on the return, the tax shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may legally be claimed on the return. If a return is determined to be delinquent, then the penalty shall continue to be assessed on any additional amounts of tax determined to be due. The percent of penalty applied to additional amounts of tax determined to be due shall be the percentage which had accumulated when the initial penalty was assessed and paid on the delinquent return.

All payments shall be first applied to the penalty and then to the interest, and the balance, if any, to the amount of tax then due.

In addition to the penalty computed above, there shall be added interest as provided by law from the due date of the return. Interest accrues on the tax or additional tax at the rate of three-fourths of one percent per month, counting each fraction of a month as an entire month, computed from the date the return or deposit was required to be filed until December 31, 1981. See rule 701—10.2(421) for the statutory interest rate commencing on or after January 1, 1982.

10.110(2) *Computation for tax due on or after January 1, 1985, but before January 1, 1987.* Iowa Code section 422.58(1) provides for a penalty of 10 percent for the failure to remit at least 90 percent of the tax due with the filing of the return or pay less than 90 percent of any tax required to be shown on the return. For purposes of computing the penalty in case of failure to pay at least 90 percent of the amount required to be shown on the return, the tax shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may legally be claimed on the return.

The penalty for failure to pay at least 90 percent of the tax required to be shown on the return is not subject to waiver.

All payments shall be first applied to the penalty and then to the interest, and the balance, if any, to the amount of tax due. See *Ashland Oil Co. v. Iowa Department of Revenue and Finance,* 452 N.W.2d 162 (Iowa 1990). See subrule 10.41(4) for examples of computation of penalty and interest for tax periods ending before January 1, 1991. See subrule 10.6(5) for examples of penalty computation for tax periods beginning on or after January 1, 1991.

In addition to the penalty computed above, there shall be added interest as provided by law from the due date of the return. See rule 701—10.2(421) for the statutory interest rate.

10.110(3) *Computation for tax due on or after January 1, 1987, but for tax periods ending before January 1, 1991.* Iowa Code section 422.58(1) provides for a penalty of 15 percent for the failure to remit at least 90 percent of the tax due with the filing of the return or pay less than 90 percent of the tax required to be shown on the return. For purposes of computing the penalty in case of failure to pay at least 90 percent of the amount required to be shown on the return, the tax will be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may legally be claimed on the return.

The penalty for failure to pay at least 90 percent of the tax required to be shown on the return is not subject to waiver.

All payments must be first applied to the penalty and then to the interest, and the balance, if any, to the amount of tax due. See *Ashland Oil Co. v. Iowa Department of Revenue and Finance,* 452 N.W.2d 162 (Iowa 1990). See subrule 10.41(6) for examples of computation of penalty and interest.

In addition to the penalty computed above, there shall be added interest as provided by law from the due date of the return. See rule 701—10.2(421) for the statutory interest rate.

See rule 701—10.5(421) for statutory exceptions to penalty for tax due on or after January 1, 1987, but for tax periods ending before January 1, 1991. See rule 701—10.6(421) for penalty for tax periods beginning on or after January 1, 1991.

This rule is intended to implement Iowa Code section 423.40 and 2005 Iowa Code Supplement section 423A.1.

701—10.111(423A) Request for waiver of penalty. This rule is only applicable to tax due on or before December 31, 1984. Any taxpayer who believes there is good reason to object to any penalty imposed by the department for failure to timely file returns, or pay the tax must submit a request for waiver seeking that the penalty be waived. If it can be shown to the director's satisfaction that the failure was due to reasonable cause, the penalty will be adjusted accordingly. The request must be in the form of an affidavit and must contain all facts alleged as reasonable cause for the taxpayer's failure to file the return, or pay the tax as required by law. The following are examples of situations that may be accepted by the director as being reasonable cause:

1. Where the return, monthly deposit or payment was filed on time, but filed erroneously with another state agency or the Internal Revenue Service.
2. A showing that the completed return was mailed in time to reach the department in the normal course of mails, within the legal period. If the due date is a Saturday, Sunday or legal holiday, the following business day is within the legal period.
3. Where the delay was caused by death or serious illness of the person responsible for filing.
4. Where the delay was caused by prolonged unavoidable absence of the person responsible for filing.
5. Where the delinquency was caused by destruction by fire or other casualty of the retailer's records.
6. A showing that the delay or failure was due to erroneous information given the retailer by an employee of the department.
7. Where the retailer exercised ordinary business care and prudence and was nevertheless unable to file the return within the prescribed time, then the delay is due to reasonable cause. A failure to pay will be considered to be due to reasonable cause to the extent that the retailer has made a satisfactory showing that ordinary business care and prudence were exercised in providing for payment of the liability and was nevertheless either unable to pay the tax or would suffer an undue hardship if the retailer paid on the due

date. What constitutes ordinary business care and prudence must be determined by the particular facts of a particular case, *Armstrong's Inc. v. Iowa Department of Revenue,* 320 N.W.2d 623 (Iowa 1982).

8. If the retailer has had no reported delinquencies or late payments in the past 36 months. However, this does not apply to a penalty established by audit.

9. If the return is filed on time, but the face of the return contained a mathematical error, if the retailer has had no reported delinquencies, including mathematical errors, in the past 36 months. However, this does not apply to a penalty established by audit.

See rule 701—10.6(421) for exceptions to penalty for tax periods beginning on or after January 1, 1991.

This rule is intended to implement Iowa Code section 423.40 and 2005 Iowa Code Supplement section 423A.1.

701—10.112 to **10.114** Reserved.

ALL TAXES

701—10.115(421) Application of payments to penalty, interest, and then tax due for payments made on or after January 1, 1995, unless otherwise designated by the taxpayer. The department will not reapply prior payments made by the taxpayer to penalty or interest determined to be due after the date of those prior payments. However, the department will apply payments to penalty and interest which were due at the time the payment was made.

Example (a) — Delinquent Return

a. Tax due is $1,000.

b. Return filed two months late.

c. $1,000 paid with the return.

d. The department bills the additional tax in the third month after the due date. The taxpayer pays the assessment in the third month.

The computation of additional tax is shown below:

Tax	$1,000.00	
Penalty	100.00	(10% failure to file penalty)
Interest	14.00	(2 months interest)
Total	$1,114.00	
Less payment	1,000.00	
Additional tax due	$ 114.00	
Interest	.80	(1 month interest)
Total due	$ 114.80	

Two years after the due date, the Internal Revenue Service conducts an audit and increases the taxpayer's taxable income. The department redetermines the taxpayer's liability 26 months after the due date as follows:

Tax as redetermined by the department	$1,100.00	
Less paid with return	1,000.00	
Additional tax	$ 100.00	
Penalty	10.00	(10% failure to file penalty)
Interest	18.20	(26 months interest)
Total due	$ 128.20	

Example (b) — Timely Filed No Remit

a. Tax due is $1,000.
b. Return timely filed.
c. $0 paid.

The calculation for the total amount due five months after the due date is shown below:

Tax	$1,000.00	
Penalty	50.00	(5% failure to pay penalty)
Interest	35.00	(5 months interest)
Total due	$1,085.00	

The department bills the additional tax in the fifth month after the due date and the taxpayer pays the additional amount in the eighth month after the due date. The payment is applied as follows:

Tax	$1,000.00	
Penalty	50.00	(5% failure to pay penalty)
Interest	56.00	(8 months interest)
Total due	$1,106.00	
Amount paid	$1,085.00	

Balance tax due $21.00 subject to interest until paid.

The balance due was not paid.

Three years after the due date the taxpayer forwards a copy of an Internal Revenue Service audit which increases the taxpayer's income to the department. The department recomputes the taxpayer's liability as follows:

Tax as redetermined by the department	$1,200.00	
Less paid per prior audit	979.00	
Balance due	$ 221.00	(includes the balance due of $21)
Penalty	10.00	(5% failure to pay penalty on $200, the $21.00 already bears penalty)
Interest	54.52	(36 months interest on $200 and 28 months interest on $21)
Total due	$ 285.52	

10.115(1) *Refunds.* In those instances where an audit reduced the amount of tax, penalty, and interest due over the amount paid, the department will reapply payments so that amount refunded is tax on which interest will accrue as set forth in the Iowa Code.

10.115(2) *Partial payments made after notices of assessments issued.* Where partial payments are made after a notice of assessment is issued, the department will reapply payments to penalty, interest, and then to tax due until the entire assessed amount is paid.

Where there are both agreed and unagreed to items as a result of an examination, the taxpayer and the department may agree to apply payments to the penalty, interest, and then to tax due on the agreed to items of the examination when all of the penalty, interest, and tax on the agreed to items are paid. In these instances, subsequent payments will not be applied to penalty and interest accrued on the agreed to items of the examination.

This rule is intended to implement 1994 Iowa Acts, chapter 1133, section 1.

JEOPARDY ASSESSMENTS

701—10.116(422,453B) Jeopardy assessments. A jeopardy assessment may be made where a return has been filed and the director believes for any reason that assessment or collection of the tax will be

jeopardized by delay, or where a taxpayer fails to file a return, whether or not formally called upon to file a return. In addition, all assessments made pursuant to Iowa Code chapter 453B are jeopardy assessments. The department is authorized to estimate the applicable tax base and the tax upon the basis of available information, add penalty and interest, and demand immediate payment.

A jeopardy assessment is due and payable when the notice of the assessment is served upon the taxpayer. Proceedings to enforce the payment of the assessment by seizure or sale of any property of the taxpayer may be instituted immediately.

This rule is intended to implement Iowa Code sections 422.30 and 453B.9.

701—10.117(422,453B) Procedure for posting bond. In the event a taxpayer seeks to post a bond in lieu of summary collection of a jeopardy assessment, pending final determination of the amount of tax legally due, an original and four copies of a separate written bond application conspicuously titled "Jeopardy Assessment Bond Request" must be filed with the clerk of the hearings section for the department. Thereafter, if the taxpayer and the department agree on an appropriate bond, the clerk of the hearings section for the department shall be notified and the bond shall be approved by the clerk of the hearings section for the department.

If the clerk of the hearings section for the department has not been notified that an agreement on the bond has been reached within ten days after the date upon which the bond request was filed, the clerk of the hearings section for the department shall transfer the file to the director who shall promptly schedule a hearing on the bond request with written notice to be given the taxpayer and the department at least ten days prior to the hearing.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 422.30 and 453B.9.

701—10.118(422,453B) Time limits. Bond requests may be made anytime after a timely protest to the jeopardy assessment has been filed with the clerk of the hearings section for the department, except that any bond request whereby the taxpayer seeks to postpone a scheduled sale of assets seized by or on behalf of the department must be filed with the clerk of the hearings section for the department no later than ten days from the date on which notice of the sale was mailed to, or otherwise served upon, the taxpayer. Portions of an assessment which are undisputed must be paid in full at the time a bond request is filed.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 422.30 and 453B.9.

701—10.119(422,453B) Amount of bond. In the event no agreement on the bond is reached, bonds must be posted in an amount to be determined by the director consistent with the following:

10.119(1) If property has been seized or a lien has been filed and the taxpayer seeks only to postpone the sale of property, pending final determination of the amount of tax legally due, the bond shall be in an amount equal to the expected depreciation loss, storage cost, insurance costs and any and all other costs associated with the distraint and storage of the property pending such final determination.

10.119(2) If property has been seized or a lien has been filed and the taxpayer seeks to prevent the sale of property and to have the property returned for the taxpayer's own use, pending final determination of the amount of tax legally due, the bond shall be in an amount equal to the sale price the department can reasonably expect to realize on any property seized plus all costs related to the distraint and storage of the property.

10.119(3) If a taxpayer seeks to prevent the department from seizing property or placing a lien upon property, pending final determination of the amount of tax legally due, the bond shall be in an amount equal to the total amount of the department's assessment including interest to the date of the bond.

Bonds may not be required in excess of double the amount of the department's jeopardy assessment.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 422.30 and 453B.9.

701—10.120(422,453B) Posting of bond. If the taxpayer fails to post the bond as agreed upon within 15 days from the date the bond is approved by the clerk of the hearings section for the department, no bond will be allowed and the director shall dismiss the bond request. If no agreement was reached and a bond order is issued by the director, the taxpayer has ten days to post the bond. If the bond is not posted within the ten-day period, the director shall dismiss the bond request.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 422.30 and 453B.9.

701—10.121(422,453B) Order. The director's order shall be in writing and shall include findings of fact based solely on the evidence in the record and on matters officially noticed in the record and shall include conclusions of law. The findings of fact and conclusions of law shall be separately stated. Findings of fact shall be prefaced by a concise and explicit statement of underlying facts supporting the findings. Each conclusion of law shall be supported by cited authority or by a reasoned opinion.

Orders will be issued within a reasonable time after termination of the hearing. Parties shall be promptly notified of each order by delivery to them of a copy of the order by personal service or by ordinary mail.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 422.30 and 453B.9.

701—10.122(422,453B) Director's order. The director's order constitutes the final order of the department for purposes of judicial review. Parties shall be promptly notified of the director's order by delivery to them of a copy of the order by personal service or by ordinary mail.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 422.30 and 453B.9.

701—10.123(422,453B) Type of bond. The bond shall be payable to the department for the use of the state of Iowa and shall be conditioned upon the full payment of the tax, penalty, interest, or fees that are found to be due which remain unpaid upon the resolution of the contested case proceedings up to the amount of the bond. Upon application of the taxpayer or the department, the director may, upon hearing, fix a greater or lesser amount to reflect changed circumstances, but only after ten days' prior notice is given to the department or the taxpayer as the case may be.

A personal bond, without a surety, is only permitted if the taxpayer posts with the clerk of the hearings section for the department, cash, a cashier's check, a certificate of deposit, or other marketable securities which are approved by the director with a readily ascertainable value which is equal in value to the total amount of the bond required. If a surety bond is posted, the surety on the bond may be either personal or corporate. The provisions of Iowa Code chapter 636 relating to personal and corporate sureties shall govern to the extent not inconsistent with the provisions of this subrule.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 422.30 and 453B.9.

701—10.124(422,453B) Form of surety bond. The surety bond posted shall be in substantially the following form:

BEFORE THE IOWA STATE DEPARTMENT OF REVENUE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF	*	
	*	
(Taxpayer's Name, Address and	*	SURETY BOND

designate proceeding, e.g.,	*	
income, sales, etc.)	*	DOCKET NO.
	*	

KNOW ALL PERSONS BY THESE PRESENTS:

That we _____(taxpayer)_____ as principal, and _____(surety)_____, as surety, of the county of _____, and State of Iowa, are held and firmly bound unto the Iowa Department of Revenue for the use of the State of Iowa, in the sum of $ _____ dollars, lawful money of the United States, for the payment of which sum we jointly and severally bind ourselves, our heirs, devisees, successors and assigns firmly by these presents. The condition of the foregoing obligations are, that, whereas the above-named principal has protested an assessment of tax, penalty, interest, or fees or any combination of them, made by the Iowa Department of Revenue, now if the principal _____ shall promptly pay the amount of the assessed tax, penalty, interest or fees found to be due upon the resolution of the contested case proceedings, then this bond shall be void, otherwise to remain in full force and effect.

Dated this _____ day of _____, _____.

_____
Principal

_____
Surety

_____
Surety
(corporate acknowledgment if surety is a corporation)

AFFIDAVIT OF PERSONAL SURETY

STATE OF IOWA)
COUNTY OF) ss

I hereby swear or affirm that I am a resident of Iowa and am worth beyond my debts the amount set opposite my signature below in the column entitled, "Worth Beyond Debts," and that I have property in the State of Iowa, liable to execution equal to the amount set opposite my signature in the column entitled "Property in Iowa Liable to Execution."

Signature	Worth Beyond Debts	Property in Iowa Liable to Execution
_____	$ _____	$ _____
Surety (type name)		
_____	$ _____	$ _____
Surety (type name)		

Subscribed and sworn to before me the undersigned Notary Public this _____ day of _____, _____.

_____
(Seal) Notary Public in and for the State of Iowa

701—10.125(422,453B) Duration of the bond. The bond shall remain in full force and effect until the conditions of the bond have been fulfilled or until the bond is otherwise exonerated as provided by law.

This rule is intended to implement Iowa Code sections 422.30 and 453B.9.

701—10.126(422,453B) Exoneration of the bond. Upon conclusion of the contested case administrative proceedings, the bond shall be exonerated by the director when any of the following events occur: upon full payment of the tax, penalty, interest, costs or fees found to be due; upon filing a bond for the purposes of judicial review which bond is sufficient to secure the unpaid tax penalty, interest, costs and fees; or if no additional tax, penalty, interest, costs or fees are found to be due that have not been previously paid, upon entry of a final unappealable order which resolves the underlying protest.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 422.30 and 453B.9.

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TITLE II
EXCISE

CHAPTER 11
ADMINISTRATION

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

701—11.1(422,423) Definitions. When the word "department" appears in this chapter it means the "Iowa Department of Revenue"; the word "director" means the "director of revenue"; the word "tax" means the "tax upon retail sales or use of tangible personal property or taxable services."

This rule is intended to implement Iowa Code sections 422.3 and 422.68(1).

701—11.2(422,423) Statute of limitations. On and after July 1, 1987, the period for the department's examination and determination of the correct amount of tax is unlimited in the following circumstances:

1. When a return has been filed, if the return was false or fraudulent and made with the intent to evade tax, or
2. If there has been a failure to file a return.

11.2(1) *Varying periods of limitation.* In all circumstances other than those described in the introductory paragraph of this rule, the department has the following limited amounts of time to examine a return, determine sales or use tax due, and give notice of assessment to the taxpayer:

a. For returns filed for quarterly periods beginning before January 1, 2000, five years.

b. For returns filed for quarterly periods beginning on or after January 1, 2000, and before January 1, 2001, four years.

c. For returns filed for quarterly periods beginning on or after January 1, 2001, three years.

For agreements entered into on and after July 1, 1992, the applicable period of limitation can be extended by the taxpayer's signing a waiver on a form provided by the department.

11.2(2) *One-year statute of limitations.* Whenever books and records are examined by an employee designated by the director of the department of revenue, whether to verify a return or claim for refund or in making an audit, then an assessment must be issued within one year from the date of the completion of the examination. If not, the period for which the books and records were examined becomes closed and no assessment can be made. In no case is the one-year period of limitation an extension of or in addition to the periods of limitation described in subrule 11.2(1) above. *The Maytag Company v. Iowa State Tax Commission,* Equity No. 76-130-26112, Jasper County District Court, March 1, 1966.

EXAMPLE: An employee of the department examines the books and records of the taxpayer for the period of taxpayer's returns filed on April 30, 1973, to April 30, 1977. The examination is completed on February 3, 1978. The notice of assessment must be given on or before April 30, 1978, in order to include the earliest tax return period above. If the notice of assessment is given on February 2, 1979, it is within the one-year period, but it would not be timely for purposes of the periods April 30, 1973, to December 31, 1973, although the subsequent periods beginning January 1, 1974, to April 30, 1977, could be included.

EXAMPLE: An employee of the department examines a taxpayer's books and records located in Davenport for the returns filed on April 30, 1974, to April 30, 1977. The examination is completed on February 2, 1978. However, the taxpayer's books and records for the same period located in Des Moines have not been examined. The one-year limitation period with reference to the Davenport books and records commences on February 2, 1978. However, the one-year period concerning the Des Moines books and records has not commenced.

This rule is intended to implement Iowa Code subsections 422.54(1), 422.54(2), and 422.70(1) as amended by 1999 Iowa Acts, chapter 156.

701—11.3(422,423) Credentials and receipts. Employees of the department have official credentials, and the taxpayer should require proof of the identity of persons claiming to represent the department. No charges shall be made nor gratuities of any kind accepted by an employee of the department for assistance given in or out of the office of the department.

All employees authorized to collect money are supplied with official receipt forms. When cash is paid to an employee, the taxpayer should require the employee to issue an official receipt. Such receipt shall show the taxpayer's name, address and permit number; the purpose for the payment; and the amount of the payment. The taxpayer should retain all receipts, and only official receipts for payment will be recognized by the department.

This rule is intended to implement Iowa Code sections 422.68(1), 422.71 and 423.23.

701—11.4(422,423) Retailers required to keep records.

11.4(1) *Records required.* The records required in this rule must be made available for examination upon request by the director or the director's authorized representative. The records must include the normal books of account ordinarily maintained by a person engaged in the activity in question and include all bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account as well as all schedules or working papers used in connection with the preparation of tax returns. In addition to the above, the following more specific records requirements apply:

a. A daily record of the amount of all cash and time payments and credit sales.

b. A record of the amount of all merchandise purchased and of all services performed for a retailer, including all bills of lading, invoices and copies of purchase orders.

c. A record of all deductions and exemptions taken in filing a sales or use tax return.

d. A true and complete inventory of the value of the stock on hand taken at least once a year. This includes an inventory of merchandise accepted as partial payment of the sales price on new merchandise.

e. An accurate record of all services performed, including materials purchased for use in performing these services.

f. Exemption certificates which are evidence of exempt sales must be executed or be in effect at or near (within 30 days of sale) the time of the sale. See 701—subrule 15.3(2).

11.4(2) *Microfilm and related record systems.* Microfilm, microfiche, COM (computer on machine), and other related reduction in storage systems will be referred to as "microfilm" in this rule.

Microfilm reproductions of general books of account, such as a cash book, journals, voucher registers, ledgers, etc., are not acceptable other than those maintained as specified by the Internal Revenue Service under Revenue Procedure 81-46, Section 5. Microfilm reproductions of supporting records of detail, i.e., sales invoices, purchase invoices, credit memoranda, etc., may be allowed providing all the following conditions are met and accepted by the taxpayer.

a. Appropriate facilities are provided to ensure the preservation and readability of the films for periods required.

b. Microfilm rolls are indexed, cross-referenced, labeled to show beginning and ending numbers or beginning and ending alphabetical listing of documents included, and are systematically filed.

c. The taxpayer agrees to provide transcripts of any information contained on microfilm which may be required for purposes of verification of tax liability.

d. Proper facilities are provided for the ready inspection and location of the particular records, including modern projectors for viewing and for the copying of records.

e. Any audit of "detail" on microfilm may be subject to sample audit procedures, to be determined at the discretion of the director or a designated representative.

f. A posting reference must be on each invoice.

g. Credit memoranda must carry a reference to the document evidencing the original transaction.

h. Documents necessary to support claimed exemptions from tax liability, such as bills of lading and purchase orders, must be maintained in an order by which they readily can be related to the transaction for which exemption is sought.

11.4(3) *Automatic data processing records.* Automatic data processing is defined in this rule as including electronic data processing (EDP) and will be referred to as ADP.

a. An ADP tax accounting system must have built into its program a method of producing visible and legible records which will provide the necessary information for verification of the taxpayer's tax liability.

b. ADP records must provide an opportunity to trace any transaction back to the original source or forwarded to a final total. If detail printouts are not made of transactions at the time they are processed, then the system must have the ability to reconstruct these transactions.

c. A general ledger with source references will be produced as hard copy to coincide with financial reports of tax reporting periods. In cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers should also be produced periodically.

d. Supporting documents and audit trail. The audit trail should be designed so that the details underlying the summary accounting data may be identified and made available to the director or a designated representative upon request. The system should be so designed that the supporting documents, i.e., sales invoices, purchase invoices, credit memoranda, etc., are readily available. (An audit trail is defined as the condition of having sufficient documentary evidence to trace an item from source (invoice, check, etc.) to a financial statement or tax return; or the reverse; that is, to have an auditable system.)

e. Program documentation. A description of the ADP portion of the accounting program should be available. The statements and illustrations as to the scope of operations should be sufficiently detailed to indicate:

(1) The application being performed.

(2) The procedure employed in each application (which, for example, might be supported by flow charts, block diagrams or other satisfactory description of the input or output procedures).

(3) The controls used to ensure accurate and reliable processing. Program and system changes, together with their effective dates, should be noted in order to preserve an accurate chronological record.

11.4(4) *Electronic data interchange or EDI technology.* The purpose of this subrule is to adopt the "Model Recordkeeping and Retention Regulation" report as promulgated by the Federation of Tax Administrators' Steering Committee Task Force on EDI Audit and Legal Issues for Tax Administration (March 1996). This subrule defines the requirements imposed on taxpayers for the maintenance and retention of books, records, and other sources of information under Iowa Code sections 422.50, 422A.1, and 423.21. It is also the purpose of this subrule to address these requirements where all or part of the taxpayer's records are received, created, maintained, or generated through various computer, electronic, and imaging processes and systems. A taxpayer must maintain all records that are necessary for determination of the correct tax liability as set forth in this subrule and the other subrules within rule 701—11.4(422,423). All required records must be made available on request by the department or its authorized representatives as provided in Iowa Code sections 422.50 and 423.21. If a taxpayer retains records required to be retained under this subrule in both machine-sensible and hard-copy formats, the taxpayer must make the records available to the department in machine-sensible format upon request of the department. Nothing in this subrule will be construed to prohibit a taxpayer from demonstrating tax compliance with traditional hard-copy documents or reproductions thereof, in whole or in part, whether or not the taxpayer also has retained or has the capability to retain records on electronic or other storage media in accordance with this subrule. However, as previously stated, this will not relieve a taxpayer of the obligation to comply with making records available to the department.

a. Definitions. The following definitions are applicable to this subrule:

"Database management system" means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

"Electronic data interchange" or *"EDI technology"* means the computer-to-computer exchange of business transactions in a standardized, structured electronic format.

"Hard copy" means any documents, records, reports, or other data printed on paper.

"Machine-sensible record" means a collection of related information in an electronic format. Machine-sensible records do not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems.

"Storage-only imaging system" means a system of computer hardware and software that provides for the storage, retention, and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hard copy or as an optical image.

"Taxpayer" as used in this subrule means any person, business, corporation, fiduciary, or other entity that is required to file a return with the department of revenue.

b. Record-keeping requirements—machine-sensible records. A taxpayer that maintains and retains books, records, and other sources of information in the form of machine-sensible records must comply with the following:

(1) General requirements. A taxpayer must comply with the following general requirements regarding the retention of machine-sensible records:

1. Machine-sensible records used to establish tax compliance must contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the department upon request. A taxpayer has discretion to discard duplicated records and redundant information provided its responsibilities under this regulation are met.

2. At the time of an examination, the retained records must be capable of being retrieved and converted to a standard record format. The term "standard record format" does not mean that every taxpayer must keep records in an identical manner. Instead, it requires that if a taxpayer utilizes a code system to identify elements of information in each record when creating and maintaining records, the taxpayer is required to maintain a record of the meaning of each code and any code changes so the department may effectively review the taxpayer's records.

3. Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer that does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct a traditional paper document for tax purposes.

(2) Electronic data interchange requirements. A taxpayer must comply with the following requirements for records received through electronic data interchange:

1. Where a taxpayer uses an electronic data interchange process and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. For example, for sales tax purposes the retained records should contain the following minimal information: vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, and shipping details. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method which allows the department to interpret the coded information.

2. The taxpayer may capture the information necessary to satisfy the requirements set forth in the preceding paragraph at any level within the accounting system and need not retain the original EDI transaction records provided that the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using electronic data interchange technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system captures information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the taxpayer also retains the other records such as its vendor master file and product code description lists and makes them available to the department. In this example, the taxpayer need not retain its original EDI transaction for tax purposes.

(3) Electronic data processing systems requirements. The requirements for an electronic data processing accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this regulation. In addition, pursuant to Iowa Code sections 421.9, 422.15, 422.36, 422.50, 422.59, 422A.1, and 423.21, the department must have access to the taxpayer's EDI processing, accounting, or other systems for the purposes of verifying or evaluating the integrity and reliability of those systems to provide accurate and complete records.

(4) Business process information. To verify the accuracy of the records being retained, the taxpayer must comply with the following:

1. Upon the request of the department, the taxpayer shall provide a description of the business process that created the retained records. The description must include the relationship between the

records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records.

2. The taxpayer must be capable of demonstrating the following:

- The functions being performed as they relate to the flow of data through the system;
- The internal controls used to ensure accurate and reliable processing; and
- The internal controls used to prevent unauthorized addition to, alteration of, or deletion of retained records.

3. The following specific documentation is required for machine-sensible records retained pursuant to this regulation:

- Record formats or layouts;
- Field definitions (including a record of any changes in the system or codes with the meaning of all codes used to represent information);
- File descriptions (e.g., data set name); and
- Detailed charts of accounts and account descriptions.

c. Record maintenance requirements. The department recommends, but does not require, that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records such as the labeling of records, the location and security of the storage environment, the creation of backup copies, and the use of periodic testing to confirm the continued integrity of the records. (The NARA standards may be found at 36 Code of Federal Regulations, Part 1234, July 1, 1995, Edition.) The taxpayer's computer hardware or software must accommodate the extraction and conversion of retained machine-sensible records.

d. Access to machine-sensible records. If a taxpayer retains records required to be retained under this regulation in both machine-sensible and hard-copy formats, the taxpayer must make the records available to the department in machine-sensible format upon the request of the department.

(1) The manner in which the department is provided access to machine-sensible records may be satisfied through a variety of means that must take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

(2) Access will be provided in one or more of the following manners:

1. The taxpayer may arrange to provide the department with the hardware, software, and personnel resources to access the machine-sensible records.

2. The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.

3. The taxpayer may convert the machine-sensible records to a standard record format specified by the department, including copies of files, on magnetic medium that is agreed to by the department.

4. The taxpayer and the department may agree on other means of providing access to the machine-sensible records.

e. Taxpayer's responsibility and discretionary authority. In conjunction with meeting the requirements of paragraph *"b"* of this subrule, a taxpayer may create files solely for the use of the department. For example, if a database management system is used, it is consistent with this subrule for the taxpayer to create and retain a file that contains the transaction-level detail from the database management system and that meets the requirements of paragraph *"b"* of this subrule. The taxpayer should document the process that created the separate file to show the relationship between that file and the original records. A taxpayer may contract with a third party to provide custodial or management services of the records. Such a contract will not relieve the taxpayer of its responsibilities under this rule.

f. Alternative storage media. For purposes of storage and retention, taxpayers may convert hard-copy documents received or produced in the normal course of business and required to be retained under this rule to microfilm, microfiche, or other storage-only imaging systems and may discard the original hard-copy documents, provided the rules governing alternative storage media are met. For details regarding alternative storage, see subrule 11.4(2), "Microfilm and related record systems."

g. Effect on hard-copy record-keeping requirements. Except as otherwise provided, the provisions of this subrule do not relieve taxpayers of the responsibility to retain hard-copy records that are created

or received in the ordinary course of business as required by existing law and rules. Hard-copy records may be retained on alternative storage media as indicated in paragraph *"f"* above and subrule 11.4(2).

If hard-copy records are not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), hard-copy records need not be created.

Hard-copy records generated at the time of transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this regulation. Such details include those listed in 11.4(4)*"b"*(2)"1."

Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

Nothing in this rule will prevent the department from requesting hard-copy printouts in lieu of retained machine-sensible records at the time of examination.

11.4(5) *Preservation of records.* The records required in this rule shall be preserved for a period of five years and open for examination by the department during this period of time. *McCarville v. Ream,* 247 Iowa, 72 N.W.2d 476 (1956).

The department shall be able to examine the records of a taxpayer for a period of years as is necessary to adequately determine if tax is due in the case of a false or fraudulent return made with the intent to evade tax or in the case of a failure to file a return.

If a tax liability has been assessed and an appeal is pending to the department, state board of tax review or district or supreme court, books, papers, records, memoranda or documents specified in this rule which relate to the period covered by the assessment shall be preserved until the final disposition of the appeal.

If the requirements of this rule are not met, the records will be considered inadequate and the department will compute the tax liability as authorized in Iowa Code section 422.54.

This rule is intended to implement Iowa Code sections 422.47, 422.50, 422.54, 423.16 and 423.21.

701—11.5(422,423) Audit of records. The department shall have the right and duty to examine or cause to be examined the books, papers, records, memoranda or documents of a taxpayer for the purpose of verifying the correctness of a return filed or estimating the tax liability of any taxpayer. The right to examine records includes the right to examine copies of the taxpayer's state and federal income tax returns. When a taxpayer fails or refuses to produce the records for examination when requested by the department, the director shall have authority to require, by a subpoena, the attendance of the taxpayer and any other witness(es) whom the department deems necessary or expedient to examine and compel the taxpayer and witness(es) to produce books, papers, records, memoranda or documents relating in any manner to sales and use tax.

The department shall have the legal obligation to inform the taxpayer when an examination of the taxpayer's books, papers, records, memoranda, or documents has been completed and the amount of tax liability, if any, due upon completion of the audit. Tax liability includes the amount of tax, interest, penalty and fees which may be due.

This rule is intended to implement Iowa Code sections 422.50, 422.70, 423.21, and 423.23.

701—11.6(422,423) Billings.

11.6(1) *Notice of adjustments.*

a. An agent, auditor, clerk, or employee of the department, designated by the director to examine returns and make audits, who discovers discrepancies in returns or learns that gross receipts, gross purchases, or services subject to sales and use tax may not have been listed, in whole or in part, or that no return was filed when one was due, is authorized to notify the person of this discovery by ordinary mail. This notice is not an assessment. It informs the person what amount would be due if the information discovered is correct.

b. Right of person upon receipt of notice of adjustment. A person who has received notice of an adjustment in connection with a return may pay the additional amount stated to be due. If payment is made, and the person wishes to contest the matter, they should then file a claim for refund. However,

payment will not be required until an assessment has been made (although interest will continue to accrue if payment is not made). If no payment is made, the person may discuss with the agent, auditor, clerk, or employee who notified them of the discrepancy, either in person or through correspondence, all matters of fact and law which may be relevant to the situation. This person may also ask for a conference with the Audit and Compliance Division, Des Moines, Iowa. Documents and records supporting the person's position may be required.

c. Power of agent, auditor or employee to compromise tax claim. No employee of the department has the power to compromise any tax claims. The power of the agent, auditor, clerk or employee who notified the person of the discrepancy is limited to the determination of the correct amount of tax.

11.6(2) *Notice of assessment.* If, after following the procedure outlined in subrule 11.6(1), paragraph *"b,"* no agreement is reached and the person does not pay the amount determined to be correct, a notice of the amount of tax due shall be sent to the person responsible for paying the tax. This notice of assessment shall bear the signature of the director and will be sent by mail.

If the notice of assessment is timely protested according to the provisions of rule 701—7.41(17A), proceedings to collect the tax will not be commenced until the protest is ultimately determined, unless the department has reason to believe that a delay caused by the appeal proceedings will result in an irrevocable loss of tax ultimately found to be due and owing the state of Iowa. The department will consider a protest to be timely if filed no later than 30 days following the date of assessment notice. See rule 701—7.4(17A). For notices of assessment issued on or after January 1, 1995, the department will consider a protest to be timely if filed no later than 60 days following the date of the assessment notice or, if the taxpayer fails to timely appeal a notice of assessment, the taxpayer may make payment pursuant to rule 701—7.41(17A) and file a refund claim within the period provided by law for filing such claims.

11.6(3) *Supplemental assessments and refund adjustments.* The department may, at any time within the period prescribed for assessment or refund adjustment, make a supplemental assessment or refund adjustment whenever it is ascertained that any assessment or refund adjustment is imperfect or incomplete in any respect.

If an assessment or refund adjustment is appealed (protested under rule 701—7.41(17A)) and is resolved whether by informal proceedings or by adjudication, the department and the taxpayer are precluded from making a supplemental assessment or refund adjustment concerning the same issue involved in the appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation.

This rule is intended to implement Iowa Code sections 422.54(1), 422.54(2), 422.57(1), 422.57(2), 422.70, 423.21 and 423.23.

701—11.7(422,423) Collections. If the director determines it expedient or advisable, the director may enforce the collection of the tax liability which has been determined to be due. In the action, the attorney general shall appear for the department and have the assistance of the county attorney in the county in which the action is pending.

The remedies for the enforcement and collection of sales and use tax are cumulative, and action taken by the department or attorney general shall not be construed to be an election on the part of the state or any of its officers to pursue any remedy to the exclusion of any other remedy.

This rule is intended to implement Iowa Code sections 422.26, 422.56, and 423.17.

701—11.8(422,423) No property exempt from distress and sale. By reference, Iowa Code section 422.56 makes section 422.26 a part of the sales and use tax law and provides that said section shall apply in respect to a sales and use tax liability determined to be due by the department. The department shall proceed to collect the tax liability after the same has become delinquent; but no property of the taxpayer shall be exempt from the payment of said tax.

This rule is intended to implement Iowa Code sections 422.26, 422.56, and 423.17.

701—11.9(422,423) Information confidential. When requested to do so by any person having a legitimate interest in such information, the department shall, after being presented with sufficient proof

of the entire situation, disclose to the person the amount of unpaid taxes due by a taxpayer. The person shall provide the department with sufficient proof consisting of all relevant facts and the reason or reasons for seeking information as to the amount of unpaid taxes due by the taxpayer. The information sought shall not be disclosed if the department determines that the person requesting information does not have a legitimate interest. Examples of those who might seek information on a taxpayer are persons from whom a taxpayer is seeking credit, or with whom the taxpayer is negotiating the sale of any personal property.

Upon request, the department may disclose to any person whether or not a taxpayer has a sales tax permit because the law requires the taxpayer's permit to be conspicuously posted at all times in the taxpayer's place of business, thus becoming public information.

All other information obtained by employees of the department in the performance of their official duties is confidential and cannot be disclosed. See rule 701—6.3(17A).

This rule is intended to implement Iowa Code sections 422.56, 422.72, and 423.23.

701—11.10(422) Bonding procedure. The director may, when necessary and advisable in order to secure the collection of the tax, require any person subject to the tax to file with the department a bond in an amount as the director may fix, or in lieu of the bond, securities approved by the director in an amount as the director may prescribe. Pursuant to the statutory authorization in Iowa Code section 422.52(3), the director has determined that the following procedures will be instituted with regard to bonds:

11.10(1) *When required.*

a. Classes of business. When the director determines, based on departmental records, other state or federal agency statistics or current economic conditions, that certain segments of the business community are experiencing above average financial failures such that the collection of the tax might be jeopardized, a bond or security will be required from every retailer operating a business within this class unless it is shown to the director's satisfaction that a particular retailer within a designated class is solvent and that the retailer previously timely remitted the tax. If the director selects certain classes of business for posting a bond or security, rule making will be initiated to reflect a listing of the classes in the rules.

b. New applications for sales tax permits. Notwithstanding the provisions of paragraph *"a"* above, an applicant for a new sales tax permit will be required to post a bond or security if (1) it is determined upon a complete investigation of the applicant's financial status that the applicant would be unable to timely remit the tax or (2) the new applicant held a permit for a prior business and the remittance record of the tax under the prior permit falls within one of the conditions in paragraph *"c"* below, or (3) the department experienced collection problems while the applicant was engaged in business under the prior permit, or (4) the applicant is substantially similar to a person who would have been required to post a bond under the guidelines as set forth in paragraph *"c"* or the person had a previous sales tax permit which has been revoked. The applicant is "substantially similar" to the extent that said applicant is owned or controlled by persons who owned or controlled the previous permit holder. For example, X, a corporation, had a previous sales tax permit revoked. X is dissolved and its shareholders create a new corporation, Y, which applies for a sales tax permit. The persons or stockholders who controlled X now control Y. Therefore, Y will be requested to post a bond or security.

c. Existing permit holders. Existing permit holders shall be required to post a bond or security when they have had one or more delinquencies in remitting the sales tax or filing timely returns during the last 24 months if filing returns on an annual basis or when they have had two or more delinquencies in remitting the sales tax or filing timely returns during the last 24 months if filing returns on a quarterly basis or have had four or more delinquencies during the last 24 months if filing returns on a monthly basis or have had eight or more delinquencies during the last 24 months if filing returns on a semimonthly basis. The simultaneous late filing of the return and the late payment of the tax will count as one delinquency. See rule 701—13.7(422). However, the late filing of the return or the late payment of the tax will not count as a delinquency if the permit holder can satisfy one of the conditions set forth in Iowa Code section 421.27.

d. Waiver of bond. If a permit holder has been required to post a bond or security or if an applicant for a permit has been required to post a bond or security, upon the filing of the bond or security if the

permit holder maintains a good filing record for a period of two years, the permit holder may request that the department waive the continued bond or security requirement.

11.10(2) *Type of security or bond.* When it is determined that a permit holder or applicant for a sales tax permit is required to post collateral to secure the collection of the sales tax, the following types of collateral will be considered as sufficient: cash, surety bonds, securities or certificates of deposit. "Cash" means guaranteed funds including, but not limited to, the following: (1) cashier's check, (2) money order or (3) certified check. If cash is posted as a bond, the bond will not be considered filed until the final payment is made, if paid in installments. A certificate of deposit must have a maturity date of 24 months from the date of assignment to the department. An acknowledgement of assignment from the bank must accompany the original certificate of deposit filed with the department. When a permit holder elects to post cash rather than a certificate of deposit as a bond, conversion to certificate of deposit will not be allowed. When the permit holder is a corporation, an officer of the corporation may assume personal liability as security for the payment of the sales tax. The officer will be evaluated as provided in (1) above as if the officer applied for a sales tax permit as an individual.

11.10(3) *Amount of bond or security.* When it is determined that a permit holder or applicant for a sales tax permit is required to post a bond or securities, the following guidelines will be used to determine the amount of the bond, unless the facts warrant a greater amount: If the permit holder or applicant will be or is a semimonthly depositor, a bond or securities in an amount sufficient to cover three months' sales tax liability will be required. If the permit holder or applicant will be or is a monthly depositor, a bond or securities in an amount sufficient to cover five months' sales tax liability will be required. If the applicant or permit holder will be or is a quarterly filer, the bond or securities which will be required is an amount sufficient to cover nine months or three quarters of tax liability. If the applicant or permit holder will be or is an annual filer, the bond or securities which will be required would be in the amount of one year's tax liability. The department does not accept bonds for less than $100. If the bond amount is calculated to be less than $100, a $100 bond is required.

This rule is intended to implement Iowa Code section 422.52.

701—11.11(422) Retailers newly liable, as of July 1, 1988, for collection of sales tax. Rescinded IAB 10/13/93, effective 11/17/93.

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◊ Two or more ARCs

CHAPTER 12
FILING RETURNS, PAYMENT OF TAX, PENALTY AND INTEREST
[Prior to 12/17/86, Revenue Department[730]]

701—12.1(422) Returns and payment of tax. Every retailer collecting more than $50 in tax in any one month shall make a monthly deposit with the department. A retailer collecting between $50 and $500 a month shall deposit the actual amount of tax collected during the month or an amount equal to not less than 30 percent of the amount of tax collected and paid during the preceding quarter. A retailer collecting $500 or more a month shall deposit the actual amount of tax collected. This deposit is due by the twentieth of the month following the month in which the tax is collected and applies only to the first two months in the quarter.

On the quarterly return, every retailer shall report the gross sales for the entire quarter, listing allowable deductions and figuring tax for the entire quarter. Space is provided on the return for a deduction of tax deposited the first and second months of the quarter. The quarterly return is due on or before the last day of the month following the end of the quarter.

Effective January 1, 1983, retailers collecting $50 a month and not more than $4000 in tax in a semimonthly period shall deposit the actual amount of tax collected during the month or an amount equal to one-third of the amount of tax collected and paid during the preceding quarter.

Every retailer collecting more than $4000 in tax in a semimonthly period shall make a semimonthly deposit with the department. A retailer collecting more than $4000 in a semimonthly period shall deposit (1) the actual amount of tax collected or an amount equal to not less than one-sixth of the amount of tax collected and paid during the preceding quarter or (2) the actual amount of tax collected or an amount equal to not less than one-sixth of the amount of tax collected and paid during the same quarter of the previous year. The method of reporting selected by the retailer, either option 1 or option 2, shall remain consistent for at least four quarters. The first semimonthly deposit is for the period from the first of the month through the fifteenth of the month and is due on or before the twenty-fifth of the month. The second semimonthly deposit is for the period from the sixteenth through the end of the month and is due on or before the tenth day of the month following the month of collection. A deposit is not required for the last semimonthly period of the calendar quarter.

Retailers required to make semimonthly or monthly deposits under any of the above methods of estimating tax based upon a period when the tax rate was 4 percent shall adjust deposits for periods beginning on or after July 1, 1992, to reflect the increase in the tax rate to 5 percent as provided in Iowa Code section 422.43.

On the quarterly return, every retailer shall report the gross sales for the entire quarter listing all allowable deductions and figuring tax for the entire quarter. Space is provided on the return for a deduction of tax deposited for the previous five semimonthly deposits. The quarterly return is due on or before the last day of the month following the end of the calendar quarter.

A seasonal business retailer with gross receipts in only one quarter during the year may request, and the director may grant, permission to file and remit sales tax for only that specific quarter in which the retailer conducted business.

Effective January 1, 1980, if it is expected that the total annual tax liability of a retailer will not exceed $120 for a calendar year, the retailer may request, and the director may grant, permission to file and remit sales tax on a calendar year basis. The returns and tax will be due and payable no later than January 31 following each calendar year in which the retailer carried on business.

Following are nonexclusive examples the department could reasonably expect to be within the guidelines for annual reporting:

1. A person selling tangible personal property or taxable services where a major portion of the business is the selling of tangible personal property or taxable services exempt from the imposition of tax; such as a wholesaler whose sales are primarily for resale, or a contractor whose business is primarily new construction.

2. A person whose business is primarily seasonal, or a person engaged in part-time selling of tangible personal property or taxable services.

3. A person whose sales are of a nontaxable service and who may, on occasion, sell tangible personal property incidental to the service.

When the due date falls on Saturday, Sunday, or a legal holiday, the return or deposit will be due the first business day following such Saturday, Sunday, or legal holiday. If a return or deposit is placed in the mails, properly addressed and postage paid, and postmarked on or before the due date for filing, no penalty will attach should the return or deposit not be received until after that date. Mailed returns should be addressed to Sales/Use Tax Processing, P.O. Box 10412, Des Moines, Iowa 50306.

This rule is intended to implement Iowa Code sections 421.14, 422.43, 422.47, 422.51, 422.52, and 423.2.

701—12.2(422,423) Remittances. The correct amount of tax collected and due shall accompany the forms prescribed by the department unless requirements for electronic transmission of remittances or deposits and related information specify otherwise. The name, address, and permit number of the sender and amount of tax for the quarterly remittance or a semimonthly or monthly deposit shall be stated unless requirements for electronic transmission of remittances or deposits and related information specify otherwise. Every return shall be signed and dated. Reporting forms and a self-addressed return envelope shall be furnished by the department to the taxpayer unless electronic transmission requirements apply; and, when feasible, the taxpayer shall use them when completing and mailing a return and remittance. All remittances shall be made payable to the Treasurer of the State of Iowa.

For tax periods starting on or after April 1, 1990, semimonthly deposits and quarterly remittances of taxpayers required to make semimonthly deposits shall be made electronically in a format and by means specified in the department. Deposit forms are not required to be filed when electronic transmission of deposits is done in the prescribed format by specified means. Quarterly returns shall be filed separately from the electronic transfer of remittances for taxpayers required to make semimonthly deposits. Deposits and remittances transmitted electronically are considered to have been made on the date that the deposit or remittance is added to the bank account designated by the treasurer of the state of Iowa. The filing of a return within the period prescribed by law and payment of the tax required to be shown thereon are simultaneous acts and if either condition is not met, a penalty shall be assessed.

This rule is intended to implement Iowa Code sections 422.16, 422.51, 422.52, 423.6, 423.13 and 423.14.

701—12.3(422) Permits and negotiated rate agreements. A person making retail sales in Iowa is required to obtain a sales tax permit from the department of revenue. Certain qualified purchasers, users, or consumers may obtain a direct pay permit which allows qualified purchasers, users, or consumers to remit tax directly to the department rather than to the retailer at the time of purchase or use. The following provisions govern the issuance of each type of permit.

12.3(1) *Sales tax permits.* Sales tax permits will be required of all resident and nonresident persons making retail sales at permanent locations within the state. A permit must be held for each location except that retailers conducting business at a permanent location who also make sales at a temporary location are not required to hold a separate permit for any temporary location. All tax collected from the temporary location shall be remitted with the tax collected at the permanent location. Persons who are registered retailers pursuant to rule 701—29.1(423) relating to use tax may remit sales taxes collected at a temporary location with their quarterly retailers use tax return. Retailers conducting a seasonal business shall also obtain a regular permit. However, returns will be filed on either a quarterly or annual basis depending upon the number of quarters in which sales are made. Sales tax permits will be required of all persons, except cities and counties, who have sales activity from gambling.

12.3(2) *Direct pay permits.* Effective January 1, 1998, qualified purchasers, users, and consumers of tangible personal property or enumerated services pursuant to Iowa Code chapters 422, 422B, and 423 may remit tax owed directly to the department of revenue instead of the tax being collected and remitted by the seller. A qualified purchaser, user, or consumer may not be granted or exercise this direct pay option except upon proper application to the department and only after issuance of the direct pay permit by the director of the department of revenue.

a. Qualifications for a direct pay permit. To qualify for a direct pay permit, all of the following criteria must be met:

(1) The applicant must be a purchaser, user, or consumer of tangible personal property or enumerated services.

(2) The applicant must have an accrual of sales and use tax liability on consumed goods of more than $4,000 in a semimonthly period. A purchaser, user, or consumer may have more than one business location and can combine the sales and use tax liabilities on consumed goods of all locations to meet the requirement of $4,000 in sales and use tax liability in a semimonthly period to qualify, if the records are located in a centralized location. If a purchaser, user, or consumer is combining more than one location, only one direct pay tax return for all of the combined locations needs to be filed with the department. However, local option sales and service tax should not be included in the tax base for determining qualification for a direct pay permit. If a purchaser, user, or consumer has more than one location, but not all locations wish to remit under a direct pay permit, the purchaser, user, or consumer must indicate which locations will be utilizing the direct pay permit at the time of application.

(3) The applicant must make deposits and file returns pursuant to Iowa Code section 422.52. See subrule 12.3(2), paragraph *"d,"* for further details.

b. Nonqualifying purchases or uses. The granting of a direct pay permit is not allowed for any of the following:

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

(2) Taxes imposed under Iowa Code section 422C.3 (sales tax on the rental receipts of qualifying rental motor vehicles), Iowa Code section 423.7 (use tax on the sale or use of motor vehicles), or Iowa Code section 423.7A (use tax on the lease price of qualifying leased motor vehicles).

c. Application and permit information. To obtain a direct pay permit, a purchaser, user, or consumer must properly complete an application form prescribed by the director of revenue and provide certification that the purchaser, user, or consumer has paid sales and use tax to the department of revenue or vendors over the last two years prior to application, an average of $4,000 in a semimonthly period.

Upon approval, the director will issue a direct pay permit to qualifying applicants. The permit will contain direct pay permit identifying information including a direct pay permit identification number. The direct pay permit should be retained by the permit holder. When purchasing from a vendor, a permit holder should give the vendor a certificate of exemption containing the information as set forth in rule 701—15.3(422,423).

d. Remittance and reporting. Sales, use, and local option tax that is to be reported and remitted to the department will be on a semimonthly basis. Remittance of tax due under a direct pay permit will begin with the first quarter after the direct pay permit is issued to the holder. The tax to be paid under a direct pay permit must be remitted directly to the department by electronic funds transfer (EFT) only. A permit holder need not have remitted by EFT prior to obtaining a direct pay permit to qualify for such a permit. However, a permit holder must remit taxes due by EFT for transactions entered into on or after the date the permit is issued. All local option sales and service tax due must be reported and remitted at the same time as the sales and use taxes due under the direct pay permit for the corresponding tax period. However, local option sales and service tax should not be included in the tax base for determining qualification for a direct pay permit or frequency of remittance. Reports should be filed with the department on a quarterly basis. The director may, when necessary and advisable in order to secure the collection of tax due, require an applicant for a direct pay permit or a permit holder to file with the director a qualified surety bond as set forth in Iowa Code section 422.52. A permit holder who fails to report or remit any tax when due is subject to the penalty and interest provisions set forth in Iowa Code section 422.52.

e. Permit revocation and nontransferability. A direct pay permit may be used indefinitely unless it is revoked by the director. A direct pay permit is not transferable and it may not be assigned to a third party. The director may revoke a direct pay permit at any time the permit holder fails to meet the requirements for a direct pay permit, misuses the direct pay permit, or fails to comply with the provisions in Iowa Code section 422.53. If a direct pay permit is revoked, it is the responsibility of the prior holder of the permit to inform all vendors of the revocation so the vendors may begin to collect tax at the time of

purchase. A prior permit holder is responsible for any tax, penalty, and interest due for failure to notify a vendor of revocation of a direct pay permit.

f. *Record-keeping requirements.* The parties involved in transactions involving a direct pay permit shall have the following record-keeping duties:

(1) Permit holder. The holder of a direct pay permit must retain possession of the direct pay permit. The permit holder must keep a record of all transactions made pursuant to the direct pay permit in compliance with rule 701—11.4(422,423).

(2) Vendor. A vendor must retain a valid exemption certificate under rule 701—15.3(422,423) which is received from the direct pay permit holder and retain records of all transactions engaged in with the permit holder in which tax was not collected, in compliance with rule 701—11.4(422,423). A vendor's liability for uncollected tax is governed by the liability provisions of a seller under an exemption certificate set forth in rule 701—15.3(422,423).

12.3(3) *Negotiated rate agreements.* Any person who has been issued or who has applied for a direct pay permit may request the department to enter into a negotiated rate agreement with the permit holder or applicant. These agreements are negotiated on a case-by-case basis and, if approved by the department, allow a direct pay permit holder to pay the state sales, local option sales, or use tax on a basis calculated by agreement between the direct pay permit holder and the department. Negotiated rate agreements are not applicable to sales and use taxes set out in subrule 12.3(2), paragraph *"b,"* above, and no negotiated rate agreement is effective for any period during which a taxpayer who is a signatory to the agreement is not a direct pay permit holder.

All negotiated rate agreements shall contain the following information or an explanation for its omission:

1. The name of the taxpayer who has entered into the agreement with the department.
2. The name and title of each person signing the agreement and the name, telephone or fax number, and E-mail or physical address of at least one person to be contacted if questions regarding the agreement arise.
3. The period during which the agreement is in effect and the renewal or extension rights (if any) of each party, and the effective date of the agreement.
4. The negotiated rate or rates, the classes of sales or uses to which each separate rate is applicable, any items which will be excluded from the agreement, and any circumstances which will result in a changed rate or rates or changed composition of classes to which rates are applicable.
5. Actions or circumstances which render the agreement void, or voidable at the option of either party, and the time frame in which the agreement will be voided.
6. Rights, if any, of the parties to resort to mediation or arbitration.
7. An explanation of the department's right to audit aspects of the agreement, including any right to audit remaining after the agreement's termination.
8. The conditions by which the agreement may be terminated and the effective date of the termination.
9. The methodology used to determine the negotiated rate and any schedules needed to verify percentages.
10. Any other matter deemed necessary to the parties' mutual understanding of the agreement.

This rule is intended to implement Iowa Code sections 422.45(20) and 422.53 as amended by 1997 Iowa Acts, House File 266.

701—12.4(422) Nonpermit holders. Persons not regularly engaged in selling at retail and who do not have a permanent place of business but are temporarily engaged in selling from trucks, portable roadside stands, concessionaires at state, county, district, or local fairs, carnivals and the like shall collect and remit tax on a nonpermit basis. In such cases, a nonpermit identification certificate will be issued by the department for record-keeping purposes and may be displayed in the same manner as a sales tax permit. If the department deems it necessary and advisable in order to secure the collection of tax, transient or itinerant sellers shall be required to post a bond or certificate of deposit. A cash bond or a surety bond issued by a solvent surety company authorized to do business in Iowa shall be acceptable, provided the

bonding company is approved by the insurance commissioner as to solvency and responsibility. The amount and type of bond shall be determined according to the rules promulgated by the director.

The department shall determine the due date of returns and payment of tax for temporary permit holders, giving due consideration to the type of business and frequency of sales. Persons holding nonpermit identification certificates may be required to remit tax upon demand or at the end of the event.

Persons regularly engaged in selling tangible personal property which is exempt from tax, making nontaxable transactions, or engaged in performing a service which is not enumerated in Iowa Code section 422.43 shall not be required to obtain a sales tax permit. However, if the retailer makes taxable sales or provides taxable services, the retailer will be required to hold a permit under the provisions of this rule.

This rule is intended to implement Iowa Code section 422.53.

701—12.5(422,423) Regular permit holders responsible for collection of tax. A regular permit holder may operate by selling merchandise by trucks, canvassers, or itinerant salespeople over fixed routes within the county in which the permanent place of business is located or other counties in this state. When this occurs, the regular permit holder is liable for reporting and paying tax on these sales. The person doing the selling for the regular permit holder shall be required to have a form, either in possession or in the vehicle, which authorizes that person to collect tax. This form is obtained from the department and shall contain the name, address, and permit number of the retailer according to the records of the department.

This rule is intended to implement Iowa Code sections 422.53 and 423.9.

701—12.6(422,423) Sale of business. A retailer selling the business shall file a return within the succeeding month thereafter and pay all tax due. Any unpaid tax shall be due prior to the transfer of title of any personal property to the purchaser and the tax becomes delinquent one month after the sale.

A retailer discontinuing business shall maintain the business's records for a period of five years from the date of discontinuing the business unless a release from this provision is given by the department. See 701—subrule 18.28(2) regarding possible sales and use tax consequences relating to the sale of a business.

This rule is intended to implement Iowa Code sections 422.51(2) and 422.52.

701—12.7(422) Bankruptcy, insolvency or assignment for benefit of creditors. In cases of bankruptcy, insolvency or assignment for the benefit of creditors by the taxpayer, the taxpayer shall immediately file a return with the tax being due.

This rule is intended to implement Iowa Code section 422.51(2).

701—12.8(422) Vending machines and other coin-operated devices. An operator who places machines on location shall file a return which includes gross receipts from all machines or devices operated by the retailer in Iowa during the period covered by the return. The mandatory beverage container deposit required under the provisions of Iowa Code chapter 455C shall not be considered part of the gross receipts.

This rule is intended to implement Iowa Code sections 422.42(16), 422.43, 422.51, and Iowa Code chapter 455C.

701—12.9(422) Claim for refund of tax. Refunds of tax shall be made only to those who have actually paid the tax. A person or persons may designate the retailer who collects the tax as an agent for purposes of receiving a refund of tax. A person or persons who claim a refund shall prepare the claim on the prescribed form furnished by the department.

A claim for refund shall be filed with the department, stating in detail the reasons and facts and, if necessary, supporting documents for which the claim for refund is based. See 1968 O.A.G. 879. If the claim for refund is denied, and the person wishes to protest the denial, the department will consider a protest to be timely if filed no later than 30 days following the date of denial. See rule 701—7.41(17A).

For refunds denied on or after January 1, 1995, the department will consider a protest to be timely if filed no later than 60 days following the date of denial.

When a person is in a position of believing that the tax, penalty, or interest paid or to be paid will be found not to be due at some later date, then in order to prevent the statute of limitations from running out, a claim for refund or credit must be filed with the department within the statutory period provided for in Iowa Code section 422.73(1). The claim must be filed requesting that it be held in abeyance pending the outcome of any action which will have a direct effect on the tax, penalty or interest involved. Nonexclusive examples of such action would be: court decisions, departmental orders and rulings, and commerce commission decisions.

EXAMPLE: X, an Iowa sales tax permit holder, is audited by the department for the period July 1, 1972, to June 30, 1977. A $10,000 tax, penalty and interest liability is assessed on materials the department determines are not used in processing. X does not agree with the department's position, but still pays the full liability even though X is aware of pending litigation involving the materials taxed in the audit.

Y is audited for the same period involving identical materials used to those taxed in the audit of X. However, Y, rather than paying the assessment, takes the department through litigation and wins. The final litigation is not completed until September 30, 1983.

X, on October 1, 1983, upon finding out about the decision of Y's case, files a claim for refund relating to its audit completed in June 1977. The claim will be totally denied as beyond the five-year statute of limitations. However, if X had filed a claim along with payment of its audit in June 1977, and requested that the claim be held in abeyance pending Y's litigation, then X would have received a full refund of their audit liability if the decision in Y's case was also applicable to X.

EXAMPLE: X, a utility company, filed a request for a rate increase with the commerce commission on June 30, 1967. The rate increase became effective January 1, 1968. However, a final decision of whether X was allowed this rate increase is not made until September 30, 1974. The rate increase was disallowed. X then had to refund to its customers all disallowed, but collected, rate increases plus sales tax. X files a claim for refund of the involved sales tax on December 30, 1974. Only the tax for the years 1970 to 1974 will be refunded. The tax for the years 1968 and 1969 will be denied as being beyond the five-year statute set forth in Iowa Code section 422.73(1). However, if X had filed a claim covering the rate increase any time before January 31, 1973, requesting it be held in abeyance pending the outcome of the commerce commission ruling, then X would have been allowed a full refund of all the sales tax that is refunded from the effective date of the rate increase, January 1, 1968, through September 30, 1974.

EXAMPLE: X is audited by the department for the period July 1, 1973, to June 30, 1978, and assessed July 31, 1978. X pays the assessment on December 31, 1978. No protest was filed and no claim for refund or credit was filed requesting it be held in abeyance. On January 31, 1980, X files a claim for refund relating to the entire audit. The claim is based on a recent court decision which makes the tax liability paid by X now refundable. However, only the tax paid from January 1, 1975, through June 30, 1978, will be allowed as this is the only portion within the five-year statute of limitations set forth in section Iowa Code 422.73(1). If the claim had been filed on or before December 31, 1979, then the entire audit period July 1, 1973, to June 30, 1978, could have been considered for refund as the claim would have been filed within one year of payment.

This rule is intended to implement Iowa Code section 422.73.

701—12.10(423) Audit limitation for certain services.

12.10(1) *Definitions.* For purposes of this rule, the following definitions shall govern:

"Landscaping" means the same as defined in rule 701—26.61(423).

"Lawn care" means the same as defined in rule 701—26.61(423).

"Tree trimming and removal" means the same as defined in rule 701—26.66(423).

12.10(2) *Audit limitation for lawn care, landscaping, and tree trimming and removal services.* Notwithstanding any other provision of the Iowa Code to the contrary, the department shall not attempt to collect delinquent sales tax or use tax on a transaction involving the furnishing of lawn care, landscaping, or tree trimming and removal services which occurred more than five years prior to

the date of an audit. The date an audit will begin is when the department presents notification that the person is being contacted for an audit.

This rule is intended to implement Iowa Code section 423.31 as amended by 2008 Iowa Acts, Senate File 2428, section 23.

701—12.11 Reserved.

701—12.12(422) Extension of time for filing. Upon a proper showing of the necessity for extending the due date, the director is authorized to grant an extension of time in which to file a return. The extension shall not be granted for a period longer than 30 days. The request for the extension must be received on or before the original due date of the return. It will be granted only if the person requesting the extension shall have paid by the twentieth day of the month following the close of such quarter, 90 percent of the estimated tax due.

This rule is intended to implement Iowa Code section 422.51.

701—12.13(422) Determination of filing status.

12.13(1) *Prior to January 1, 2003.* Iowa Code sections 422.51(4) and 422.52 provide, based on the amount of tax collected, how often retailers file deposits or returns with the department (see rule 12.1(422)).

The department will determine if the retailer's current filing status is correct by reviewing the most recent four quarters of the retailer's filing history.

The following criteria will be used by the department to determine if a change in filing status is warranted.

Filing Status	Statutory Requirement	Test Criteria
Semimonthly	$4,000 in tax in a semimonthly period.	Tax remitted in 3 of most recent 4 quarters exceeds $24,000.
Monthly	$50 in tax in a month.	Tax remitted in 3 of most recent 4 quarters exceeds $150.
Annual	$120 or less in tax in prior year.	Retailer remits $120 or less in tax for last 4 quarters and requests annual filing.
Seasonal		Retailer remits tax for only 1 quarter during the previous calendar year and requests filing for 1 quarter only.
Quarterly	All other filers.	

When it is determined that a retailer's filing status is to be changed, the retailer will be notified and will be given 30 days to provide the department with a written request to prevent the change.

Retailers may request that they be allowed to file less frequently than the filing status selected by the department but exceptions will only be granted in two instances:

a. Incorrect historical data is used in the conversion. A business may meet the criteria based on initial information available, but, upon investigation, the filing history may prove that the business does not meet the dollar criteria because of adjustments, amended returns, or requests for refunds.

b. Data available may have been distorted by the fact that it reflected an unusual pattern in tax collection. The factors causing such a distortion must be documented and approved by department.

Exceptions will not be granted in instances where the retailer's request is based on a decline in business activity, reduction in employees or other potentially temporary business action which will affect current and future reporting.

Retailers will be notified in writing of approval or denial of their request for reduced filing periods.

Retailers may request that they be allowed to file more frequently than the filing status selected by the department. Approval will be granted based upon justification contained in the retailer's request.

12.13(2) *January 1, 2003, and after*. Effective July 1, 2002, the department and the department of management have the authority to change the above-mentioned filing thresholds established by department rule. After review of these filing thresholds, the department has determined that new thresholds are necessary and are to be implemented January 1, 2003. Accordingly, this subrule sets forth the filing thresholds for each filer based on the amount of sales tax collected.

Filing Status	Threshold	Test Criteria
Semimonthly	Greater than $60,000 in annual state sales tax (more than $2,500 in a semimonthly period).	Tax remitted in 3 of most recent 4 quarters examined exceeds $15,000 per quarter.
Monthly	Between $6,000 and $60,000 in annual state sales tax (more than $500 in a monthly period).	Tax remitted in 3 of most recent 4 quarters examined exceeds $1,500 per quarter.
Quarterly	Between $120 and $6,000 in annual state sales tax.	Tax remitted in 3 of most recent 4 quarters examined exceeds $30 per quarter.
Annual	Less than $120 in state sales tax for the prior year.	Tax remitted in prior year is less than $120.
Seasonal	Retailer remits tax for only 1 quarter during the previous calendar year and requests filing for 1 quarter only.	

A retailer shall be notified in writing when it is determined that a retailer's filing status will be changed. A retailer has the option of requesting, within 30 days of the date of the department's notice of a change in filing frequency, that the retailer file more or less frequently than required by the department. A request to file on a less frequent basis than assigned by the department must be in writing and submitted to the department. Once such a written request is filed by the retailer, the department will review the request and issue a written determination to the retailer.

A change in assigned filing status to file on a less frequent basis will be granted in only two instances:

a. Incorrect historical data is used in the conversion. A business may meet the criteria based on the original filing data, but, upon investigation, the filing history may prove that the business does not meet the dollar criteria because of adjustments, amended returns, or requests for refunds.

b. Data available may have been distorted by the fact that the data reflected an unusual pattern in tax collection. The factors causing such a distortion must be documented and approved by the department.

A retailer may also request to file more frequently than assigned by the department; the request may be made orally, in person, or by telephone. With the exception of those retailers who previously filed on a quarterly basis and have been changed to an annual filing frequency, any retailer seeking to file on a more frequent basis than assigned shall be required to deposit revenues by electronic funds transfer if the department allows the retailer to file more frequently.

The department and the department of management may perform review of filing thresholds every five years or as needed based on department discretion. Factors the departments will consider in determining if the filing thresholds need to be changed include, but are not limited to: tax rate changes, inflation, the need to maintain consistency with required multistate compacts, changes in law, and migration between filing brackets.

This rule is intended to implement Iowa Code sections 421.14, 422.51, and 422.52, and sections 422.54 as amended by 2002 Iowa Acts, House File 2622, section 11, and 423.13 as amended by 2002 Iowa Acts, House File 2622, section 14.

701—12.14(422,423) Immediate successor liability for unpaid tax. A retailer ceasing to do business is obligated to prepare a final return and pay all tax due within the time required by law. If a retailer ceasing to do business fails to do this, any immediate successor to the retailer who purchases the business or stock of goods is obligated to withhold from the purchase price enough of the purchase price to pay the tax, interest, or penalty which the retailer owes. Any immediate successor who intentionally fails to withhold sufficient of the purchase price to pay the delinquent tax, interest, and penalty is personally liable for the payment of the tax. However, if the immediate successor's purchase of the business or stock of goods was made in good faith that the retailer owed no tax, interest, or penalty, then the department may waive the immediate successor's liability.

12.14(1) *Immediate successors having a duty to withhold.* Only an immediate successor who, pursuant to a contract of sale, pays a purchase price to a retailer in return for the transfer of a going business or a stock of goods is obligated to inquire if tax, penalty, or interest is due and to withhold a portion of the purchase price if necessary. Persons who fail some aspect of this test, e.g., because they take by operation of law rather than by contract or provide no consideration, are not obligated to investigate or withhold. Nonexclusive examples of persons not so obligated are the following:

a. A person foreclosing on a valid security interest.

b. A person retaking possession of premises under a valid lease.

c. A spouse electing to take under a will.

d. A person taking by gift.

e. Any other person taking for what would legally be considered "for value" but without the payment of a recognizable "purchase price."

Included within the meaning of the phrase "immediate successor" is a corporation resulting from the action of a sole proprietor who incorporates a business in which the sole proprietor is the only or the controlling shareholder; or a sole proprietorship established from a corporation of which the sole proprietor was the exclusive, majority, or controlling stockholder.

12.14(2) *More than one immediate successor.* If a retailer sells a business or stock of goods to two or more persons the following rules apply:

a. *Sale of stock of goods to two or more persons.* If a retailer sells a substantial portion of the retail business's stock of goods to another person who will in turn offer those goods for sale in a retail business, that person is an "immediate successor" and personally liable for payment of tax to the extent of tax, interest, or penalty owed or the amount of the individual purchase price, whichever is the lesser.

EXAMPLE: A sells the stock of goods from a furniture business, in unequal portions, to B, C, and D. B pays a $5,000 purchase price for a portion of the stock of goods, C pays $20,000 for a portion of the stock of goods, and D pays a $30,000 purchase price for the remainder of A's stock of goods. A, at the time of the transfers, owes the department of revenue $10,000 in sales tax, interest, and penalty. Neither B, C, nor D withholds any amount for payment of tax from the purchase price. B, C, and D individually and together are liable for payment of the tax. Each is personally liable up to the amount of the purchase price which each has paid or the amount of tax, interest, and penalty owing, whichever is the lesser. In this example, B is liable for $5,000, the lesser amount of B's purchase price ($5,000) and the amount of tax which A owes ($10,000); C is liable for $10,000, since purchase price and tax owed are equal; and D is liable for $10,000, the lesser amount of tax owed ($10,000) and D's purchase price ($30,000). The department can proceed against any one, two, or all three of the immediate successors up to the amount of tax which each owes, as it chooses.

b. *Purchase of differing places of business.* If one person owns two or more places of business, each having a separate sales tax permit, each location having its own permit is a separate business and has a separate stock of goods for the purpose of determining successor liability. A person purchasing the business at one location or the stock of goods from one location would be personally liable only for the tax owed under the permit assigned to that location.

12.14(3) *"Sale of a retailer's business" characterized.* Usually, the sale of only the machinery or equipment used in a business without the sale or leasing of the realty of the business is not a sale of the business itself. *People v. Gabriel,* 135 P.2d 378 (Cal. App. 1943). The transfer of a retailer's machinery or equipment and business realty to a person who continues to use the machinery, equipment, and realty

for the sale of any type of tangible personal property constitutes the selling of the retailer's business, and the person to whom the business is sold is an "immediate successor" and liable for tax.

EXAMPLE: A is a furniture dealer. The furniture business falls on hard times. A sells the stock of goods (the furniture offered for sale) to B. A then sells the furniture store (business realty) to C. A also sells C the office equipment and all other tangible personal property used in the operation of the furniture store except for the stock of goods (furniture). C then uses the purchased store and the office equipment in the operation of a sporting goods store. B takes the furniture purchased from A to B's furniture store where it is sold. A owed the department $7,000 in sales tax. Both B and C are immediate successors to A and personally liable for the sales tax.

12.14(4) *"Good faith" characterized.* An immediate successor to a retailer has purchased the retailer's business or stock of goods "in good faith" if the immediate successor demonstrates, by suitable evidence, that one of the following situations exists. The list of situations is exclusive:

a. The department has provided the immediate successor with a certified statement that no delinquent tax, interest, or penalty is unpaid; or

b. The immediate successor has taken "in good faith" a certified statement from the licensee, retailer, or seller that no delinquent tax, interest, or penalty is unpaid as of the date of purchase. Immediate successors should not rely upon oral statements from department personnel that no tax, interest, or penalty is unpaid. An immediate successor should request a written statement to this effect. For information regarding delinquent tax, interest, or penalty and tax liens write to: Collections Section Supervisor, Iowa Department of Revenue, P.O. Box 10471, Hoover State Office Building, Des Moines, Iowa 50306. A "certified statement" from a retailer is a statement the truth of which is attested to before a notary public or other officer authorized to take oaths. A certified statement has been taken from a retailer "in good faith" if the immediate successor, in the exercise of due diligence, had no reason to believe a retailer's statement was false or no reason to question the truth of the retailer's statement.

This rule is intended to implement Iowa Code section 421.28.

701—12.15(422,423) Officers and partners—personal liability for unpaid tax. If a retailer or purchaser fails to pay sales tax when due, any officer of a corporation or association, or any partner of a partnership, who has control of, supervision of, or the authority for remitting the sales tax payments and has a substantial legal or equitable interest in the ownership of the corporation or partnership is personally liable for payment of the tax, interest, and penalty if the failure to pay the tax is intentional. This personal liability is not applicable to sales tax due and unpaid on accounts receivable. The dissolution of a corporation, association, or partnership does not discharge a responsible person's liability for failure to pay tax.

12.15(1) *Personal liability—how determined.* There are various criteria which can be used to determine which officers of a corporation have control of, supervision of, or the authority for remitting tax payments. Some criteria are:

a. The duties of officers as outlined in the corporate bylaws,

b. The duties which various officers have assumed in practice,

c. Which officers are empowered to sign checks for the corporation,

d. Which officers hire and fire employees, and

e. Which officers control the financial affairs of the corporation. An officer in control of the financial affairs of a corporation may be characterized as one who has final control as to which of the corporation's bills should or should not be paid and when bills which had been selected for payment will be paid. "Final control" means a significant control over which bills should or should not be paid rather than exclusive control. The observations in this paragraph are applicable to partnerships as well as corporations.

12.15(2) *"Accounts receivable" described.* Officers and partners are not responsible for sales tax due and owing on accounts receivable. An "account receivable" is a contractual obligation owing upon an open account. An open account is one which is neither finally settled or finally closed, but is still running and "open" to future payments or the assumption of future additional liabilities. The ordinary consumer installment contract is not an "account receivable." The amount due has been finally settled

and is not open to future adjustment. The usual consumer installment contract is a "note receivable" rather than an account receivable. An account receivable purchased by a factor or paid by a credit card company is, as of the date of purchase or payment, not an account receivable. An officer or partner will be liable for the value of the account receivable purchased or paid. Officers and partners have the burden of proving that tax is not due because it is a tax on an account receivable.

12.15(3) *Beginning date of personal liability.* Officers and partners are not personally liable for state sales tax due and unpaid prior to March 13, 1986. They are liable for state sales taxes which are both due and unpaid on and after that date. See department rule 701—107.12(422B) for an explanation of officer and partner liability for unpaid local option sales tax.

701—12.16(422) Show sponsor liability. Persons sponsoring flea markets or craft, antique, coin, stamp shows, or similar events are, under certain circumstances, liable for payment of sales tax, interest, and penalty due and owing from any retailer selling property or services at the event. Included within the meaning of the term "similar event" is any show at which guns or collectibles, e.g., depression glassware or comic books, are sold or traded. To avoid liability, sponsors of these events must obtain from retailers appearing at the events proof that a retailer possesses a valid Iowa sales tax permit or a statement from the retailer, taken in good faith, that the property or service which the retailer offers for sale is not subject to sales tax. "Good faith" may demand that the sponsor inquire into the nature of the property or service sold or why the retailer believes the property or services for sale to be exempt from tax. A sponsor who fails to take these measures assumes all of the liabilities of a retailer. This includes not only the obligation to pay tax, penalty, and interest, but also to keep the records required of a retailer and to file returns.

Excluded from the requirements of this rule and from sponsor liability are organizations which sponsor events fewer than three times a year and state, county, or district agricultural fairs.

This rule is intended to implement the requirements of Iowa Code section 422.52.

701—12.17(422) Purchaser liability for unpaid sales tax. For sales occurring on and after March 13, 1986, if a purchaser fails to pay sales tax to a retailer required to collect the tax, the tax is payable by the purchaser directly to the department. The general rule is that the department may proceed against either the retailer or the purchaser for the entire amount of tax which the purchaser is, initially, obligated to pay the retailer. However, see 701—subrule 15.3(2) for a situation in which the obligation to pay the tax is imposed upon the purchaser alone.

This rule is intended to implement Iowa Code section 422.52.

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◊ Two or more ARCs

CHAPTER 13
PERMITS
[Prior to 12/17/86, Revenue Department[730]]

701—13.1(422) Retail sales tax permit required. When used in this chapter or any other chapter relating to retail sales, the word "permit" shall mean "a retail sales tax permit."

A person shall not engage in any Iowa business subject to tax until the person has procured a permit except as provided in 13.5(422). There is no charge for a retail sales tax permit. If a person makes retail sales from more than one location, each location from which taxable sales of tangible personal property or services will occur shall be required to hold a permit. Retail sales tax permits are issued to retailers for the purpose of making retail sales of tangible personal property or taxable services. Persons shall not make application for a permit for any other purpose. For details regarding direct pay permits, see rule 701—12.3(422).

This rule is intended to implement Iowa Code section 422.53 as amended by 1999 Iowa Acts, chapter 152.

701—13.2(422) Application for permit. An application for a permanent permit shall be made upon a form provided by the department, and the applicant shall furnish all information requested on such form.

An application for a permit for a business operating under a trade name shall state the trade name, as well as the individual owner's name, in the case of a sole ownership by an individual, or the trade name and the name of all partners, in the case of a partnership.

The application shall be signed by the owner, in the case of an individual business; by a partner, in the case of a partnership, although all partners' names shall appear on the application; and by the president, vice president, treasurer or other principal officer of a corporation or association, unless written authorization is given by the officers for another person to sign the application.

For electronically transmitted applications, the application form shall state that in lieu of a person's handwritten signature, the E-mail address will constitute a valid signature.

The application shall state the date when the applicant will begin selling tangible personal property or taxable services at retail in Iowa from the location for which the application is made.

This rule is intended to implement Iowa Code sections 421.17(15) and 422.53.

701—13.3(422) Permit not transferable—sale of business. Permits shall not be transferable. A permit holder selling the business shall cancel the permit, and the purchaser of the business shall apply for a new permit in the purchaser's own name.

This rule is intended to implement Iowa Code section 422.53.

701—13.4(422) Permit—consolidated return optional. Two types of permit holders have the option of filing a consolidated return. The first is a permit holder with multiple locations from which taxable sales are made and the second is certain affiliated corporations.

13.4(1) *Permit holders with multiple locations.* A permit holder procuring more than one permit may file a separate return for each permit; or, if arrangements have been made with the department, the permit holder may file one consolidated return reporting sales made at all locations for which a permit is held.

Effective July 1, 2002, in order to file a complete consolidated sales tax return, the taxpayer must file a form entitled Schedule of Consolidated Business Locations with its quarterly sales tax return, and the schedule must include all of the following items: (1) the taxpayer's consolidated permit number; (2) the permit number for each Iowa location; (3) the amount of state sales tax by business location; and (4) the amount of state sales tax due on goods consumed that are not assigned to a specific business location. Failure by the taxpayer to file a Schedule of Consolidated Business Locations form with a quarterly sales tax return will result in the quarterly return's being considered incomplete, and the taxpayer will be subject to the penalty provisions set forth in Iowa Code section 421.27.

13.4(2) *Affiliated corporations.* Any group consisting of a parent and its affiliates, which is entitled to file a consolidated return for federal income tax purposes and which makes retail sales of tangible

personal property or taxable enumerated services, may make application to the director for permission to make deposits and file a consolidated Iowa sales tax return. An application for consolidation can be made for any tax period beginning on or after January 1, 2000.

The application shall be in writing and shall be signed by an officer of the parent corporation. It shall contain the business name, address, federal identification number, and Iowa sales tax identification number of every corporation seeking the right to file a consolidated return. The application shall state the initial tax period for which the right to file a consolidated return is sought and shall be filed no later than 90 days prior to the beginning of that period. The application shall also contain any additional relevant information which the director may, in individual instances, require.

A parent corporation and each affiliate corporation that file 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.

13.4(3) *Requirements common to returns filed under subrules 13.4(1) and 13.4(2).* Taxpayers shall file consolidated returns only on forms provided by the department. All working papers used in the preparation of the information required to complete the returns must be available for examination by the department. Undercollections of sales tax at one or more locations or by one or more affiliates may not be offset by overcollections at other locations or by other affiliates.

This rule is intended to implement Iowa Code section 422.51 as amended by 2002 Iowa Acts, Senate File 2305, section 8, and Iowa Code section 422.53.

701—13.5(422) Retailers operating a temporary business. A person not regularly engaged in selling at retail and not having a permanent place of business but is temporarily selling from trucks, portable roadside stands, concessionaires at state, county, district or local fairs, carnivals and the like shall not be required to hold a permit. These retailers shall request an identification card from the department. The card shall be in a form prescribed by the director and shall be completed and displayed by the retailer to show authorization to collect tax. The issuance of the card by the department shall be dependent upon the frequency of sales and other conditions as each individual case may warrant.

This rule is intended to implement Iowa Code section 422.53(6).

701—13.6(422) Reinstatement of canceled permit. A person who previously held and canceled a permit and wishes to reengage in business in the same county shall apply to the department for reinstatement of the permit. Upon receipt of the proper clearance for previous tax returns, a new permit shall be issued.

This rule is intended to implement Iowa Code section 422.53.

701—13.7(422) Reinstatement of revoked permit. A revoked permit shall be reinstated only on such terms and conditions as the case may warrant. Terms and conditions include payment of any tax liability which may be due to the department. See rule 13.17(422) for a description of the circumstances under which nonpayment of taxes may lead to revocation of a permit.

Pursuant to the director's statutory authority in Iowa Code section 422.53(5) to restore licenses after a revocation, the director has determined that upon the revocation of a sales tax permit the initial time, the permit holder will be required to pay all delinquent sales tax liabilities, to file returns, and to post a bond and to refrain from taxable occurrences under Iowa Code section 422.43 as required by the director prior to the reinstatement or issuance of a new sales tax permit.

As set forth above, the director may impose a waiting period during which the permit holder must refrain from taxable occurrences pursuant to the penalties of Iowa Code section 422.58(2), not to exceed 90 days to restore a permit or issue a new permit after a revocation. The department may require a sworn affidavit, subject to the penalties of perjury, stating that the permit holder has fulfilled all requirements of said order of revocation, and stating the dates on which the permit holder refrained from taxable occurrences.

Each of the following situations will be considered one offense, for the purpose of determining the waiting period to reinstate a revoked permit or issue a new permit after a revocation unless otherwise noted.

Failure to post a bond as required.

Failure to file a quarterly return or monthly deposit timely.

Failure to pay tax timely (including unhonored checks, failure to pay, and late payments).

Failure to file a quarterly return or a monthly deposit and pay tax shown on the return or deposit timely (counts as two offenses).

The administrative law judge or director of revenue may order a waiting period after the revocation not to exceed:

Five days for one through five offenses.

Seven days for six through seven offenses.

Ten days for eight through nine offenses.

Thirty days for ten offenses or more.

The administrative law judge or director of revenue may order a waiting period not to exceed:

Forty-five days if the second revocation occurs within 24 months of the first revocation.

Sixty days if the second revocation occurs within 18 months of the first revocation.

Ninety days if the second revocation occurs within 12 months of the first revocation.

Ninety days if the third revocation occurs within 36 months of the second revocation.

A revoked permit will not be reinstated if the department has received a certificate of noncompliance from the child support recovery unit in regard to the permit holder, who is an individual requesting reinstatement, until the unit furnishes the department with a withdrawal of the certificate of noncompliance.

This rule is intended to implement Iowa Code sections 422.53 and 422.58(2) and 1995 Iowa Acts, chapter 115.

701—13.8(422) Withdrawal of permit. After investigation, the department will withdraw a permit under the following conditions:

13.8(1) Upon a determination that the permit holder cannot be located in the state of Iowa and upon failure to obtain service of an order to appear and show cause, after sending the notice by registered certified mail or an attempt to personally serve the notice of the order.

13.8(2) Upon a determination that the permit holder cannot be located in the state of Iowa and upon a determination by the department that a business has been terminated or abandoned by the permit holder, without a request for cancellation signed by the permit holder.

13.8(3) The permit holder has become incapacitated or unable to respond or is deceased and has no duly appointed trustee, guardian or individual holding a power of attorney, executor or administrator.

The withdrawal shall not constitute a revocation of said license, nor shall any penalties imposed for revocation be applicable. A permit so withdrawn shall be reissued in its prior status at such time as any affected permit holder so requests. The proceedings for withdrawal will be in conformity with Iowa Code section 17A.18.

This rule is intended to implement Iowa Code section 17A.18.

701—13.9(422) Loss or destruction of permit. When it becomes necessary to replace an active permit by reason of loss or destruction, the department will furnish a duplicate permit.

This rule is intended to implement Iowa Code section 422.53.

701—13.10(422) Change of location. When a business changes locations, the same permit may be used at the old and new locations if the new location is within Iowa and the ownership of the business remains the same at the new location. Otherwise, the permit must be canceled and a new permit issued.

This rule is intended to implement Iowa Code section 422.53 as amended by 2001 Iowa Acts, House File 715.

701—13.11(422) Change of ownership. A retailer changing its business entity shall apply for a new permit under the name of the new entity. This is required but not limited to such entity changes as proprietorship to partnership, partnership to corporation or any combination thereof.

This rule is intended to implement Iowa Code section 422.53.

701—13.12(422) Permit posting. The permit need not be posted for public view at the taxpayer's place of business. However, the taxpayer must, at all times, keep the permit available for inspection upon request by any department representative.

This rule is intended to implement Iowa Code section 422.53(3).

701—13.13(422) Trustees, receivers, executors and administrators. By virtue of their appointment, trustees, receivers, executors and administrators who continue to operate, manage or control a business involving the sale of tangible personal property or taxable services or engage in liquidating the assets of a business by means of sales made in the usual course of trade shall collect and remit tax on inventory and noninventory items. In Re *Hubs Repair Shop, Inc.* 28 B.R. 858 (Bkrtcy 1983).

A permit of a ward, decedent, cestui que trust, bankrupt, assignor or debtor for whom a receiver has been appointed, which is valid at the time a fiduciary relation is created, shall continue to be a valid permit for the fiduciary to continue the business for a reasonable time or to close out the business for the purpose of settling an estate or terminating or liquidating a trust.

This rule is intended to implement Iowa Code sections 422.42(1) and 422.53.

701—13.14(422) Vending machines and other coin-operated devices. An operator who places machines on location shall hold one permit for the principal place of business, whether the same is located in the state of Iowa or outside the state of Iowa.

This rule is intended to implement Iowa Code sections 422.43 and 422.53 as amended by 1986 Iowa Acts, House File 2471, and Iowa Code section 422.42.

701—13.15(422) Other amusements. Billiard and pool tables, shooting galleries and other similar undertakings operated in a regular place of business owned and managed by the operator shall not come within the provisions of the rule with respect to holding one permit for the entire state. The provision requiring a permit shall not include devices operated at fairs, circuses and carnivals which are temporarily located within the state of Iowa.

This rule is intended to implement Iowa Code chapter 422.

701—13.16(422) Substantially delinquent tax—denial of permit. The department may deny a permit to any applicant who is, at the time of application, substantially delinquent in paying any tax due which is administered by the department or the interest or penalty on the tax. If the applicant is a partnership, a permit may be denied if a partner is substantially delinquent in paying any tax, penalty, or interest regardless of whether the tax is in any way a liability of or associated with the partnership. If an applicant for a permit is a corporation, the department may deny the applicant a permit if any officer, with a substantial legal or equitable interest in the ownership of the corporation, owes any delinquent tax, penalty, or interest of the applicant corporation. In this latter instance, the corporation must, initially, owe the delinquent tax, penalty, or interest, and the officer must be personally and secondarily liable for the tax. This is in contrast to the situation regarding a partnership.

The local option sales and service tax is a tax administered by the department. Local vehicle, property, whether imposed on centrally assessed property or not, beer and liquor, and insurance premium taxes are nonexclusive examples of taxes which are not administered by the department.

The amount of tax delinquent, the number of filing periods for which a tax remains due and unpaid, and the length of time a tax has been unpaid are the principal, but nonexclusive circumstances, which the department will use to determine whether an applicant is "substantially" or insubstantially delinquent in paying a tax. The department may deny a permit for substantial delinquency. Nonexclusive factors which the department will consider in determining whether substantial delinquency will or will not result in the denial of an application for a permit are the following: whether the delinquency was inadvertent,

negligent, or intentional; the amount of tax, interest, or penalty owed in relation to the applicant's total financial resources; and whether the applicant's business is likely to survive over the long term if a license or permit is granted. This rule is applicable to tax, interest, and penalty due and payable on and after January 1, 1987.

The department will deny a permit to any applicant, who is an individual, if the department has received a certificate of noncompliance from the child support recovery unit in regard to the individual, until the unit furnishes the department with a withdrawal of the certificate of noncompliance.

This rule is intended to implement Iowa Code subsection 422.53(2) and 1995 Iowa Acts, chapter 115.

701—13.17(422) Substantially delinquent tax—revocation of permit. The department may revoke a permit if the permit holder has become substantially delinquent in paying any tax which is administered by the department or the interest or penalty on the tax. If the person holding a permit is a corporation, the department may revoke the permit if any officer, with a substantial legal or equitable interest in the ownership of the corporation, owes any delinquent tax, penalty, or interest of the permit-holding corporation. In this latter instance, the corporation must, initially, owe the delinquent tax, penalty, or interest, and the officer must be personally and secondarily liable for the tax. If the permit holder is a partnership, a permit cannot be revoked for a partner's failure to pay a tax which is not a liability of the partnership. This is in contrast to the situation regarding an application for a permit. See rule 13.16(422). Also, see rule 13.16(422) for characterizations of the terms "tax administered by the department" and "substantially delinquent" and for a description of some of the factors which the department will use in determining whether substantial delinquency will or will not result in the revocation of a permit. This rule is applicable to tax, interest, and penalty due and payable on and after January 1, 1987.

A revoked permit will not be reinstated if the department has received a certificate of noncompliance from the child support recovery unit in regard to the permit holder who is an individual requesting reinstatement, until the unit furnishes the department with a withdrawal of the certificate of noncompliance.

This rule is intended to implement Iowa Code subsection 422.53(5) and 1995 Iowa Acts, chapter 115.

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CHAPTER 14
COMPUTATION OF TAX

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

701—14.1(422) Tax not to be included in price. When a retailer pricemarks an article for retail sale and displays or advertises the same to the public with such pricemark, the price so marked or advertised shall include only the sale price of such article unless it is stated on the pricemark that the price includes tax.

For taxable transactions prior to July 1, 1992

EXAMPLE: The advertised or marked price is $1.00. When sale is made, the purchaser pays or agrees to pay $1.04, which represents the purchase price plus tax, which when added becomes a part of the sale price or charge.

This rule does not prohibit advertising or displaying the sale price plus tax or the price including tax, as shown in the following examples:

"This dress—$10.00 plus tax", or "This dress—$10.00 plus 40 cents tax", or "This dress—$10.40 including tax".

When a retailer conspicuously advertises in such manner and position so that it may be readily seen and read by the public, that the price "includes tax", the retailer will be allowed to determine gross receipts by dividing the total of such receipts which included tax by 104 percent.

For periods on or after July 1, 1992

EXAMPLE: The advertised or marked price is $1.00. When sale is made, the purchaser pays or agrees to pay $1.05 which represents the purchase price plus tax, which when added becomes a part of the sale price or charge.

This rule does not prohibit advertising or displaying the sale price plus tax or the price including tax, as shown in the following examples:

"This dress—$10.00 plus tax", or "This dress—$10.00 plus 50 cents tax", or "This dress—$10.50 including tax".

When a retailer conspicuously advertises in such manner and position so that it may be readily seen and read by the public, that the price "includes tax", the retailer will be allowed to determine gross receipts by dividing the total of such receipts which included tax by 105 percent.

However, where an invoice is sent to the purchaser as a part of the sale, such invoice must either show the tax separate from the purchase price or it must be stated on each invoice that tax is included in the purchase price. If the invoices state "tax included" the seller may determine gross receipts by the 104 percent or 105 percent method described above. It shall be the responsibility of the retailer who uses or has used the 104 percent or 105 percent method for reporting to provide proof that it has complied with the method of advertising or displaying the sale price, as described above.

This rule is intended to implement Iowa Code sections 422.43, 422.47, and 423.2.

701—14.2(422,423,77GA,ch1130) Retail bracket system for state sales and local option sales and service tax. When practicable, the retailer must add the sales tax or the average equivalent thereof to the sale price and collect the same from the consumer or user. Competing retailers and organizations or associations of retailers may provide uniform methods for passing state and local option sales and use tax to the consumer with the cooperation of the department.

Pursuant to the foregoing provisions, the department has adopted the following bracket system for the application of state sales and service tax:

TAX SCHEDULE

FROM		TO		TAX AMOUNT	FROM		TO		TAX AMOUNT
$0.00	-	$0.09	=	$0.00	$2.90	-	$3.09	=	$0.15
0.10	-	0.29	=	0.01	3.10	-	3.29	=	0.16
0.30	-	0.49	=	0.02	3.30	-	3.49	=	0.17

TAX SCHEDULE

FROM		TO		TAX AMOUNT	FROM		TO		TAX AMOUNT
0.50	-	0.69	=	0.03	3.50	-	3.69	=	0.18
0.70	-	0.89	=	0.04	3.70	-	3.89	=	0.19
0.90	-	1.09	=	0.05	3.90	-	4.09	=	0.20
1.10	-	1.29	=	0.06	4.10	-	4.29	=	0.21
1.30	-	1.49	=	0.07	4.30	-	4.49	=	0.22
1.50	-	1.69	=	0.08	4.50	-	4.69	=	0.23
1.70	-	1.89	=	0.09	4.70	-	4.89	=	0.24
1.90	-	2.09	=	0.10	4.90	-	5.09	=	0.25
2.10	-	2.29	=	0.11	5.10	-	5.29	=	0.26
2.30	-	2.49	=	0.12	5.30	-	5.49	=	0.27
2.50	-	2.69	=	0.13	5.50	-	5.69	=	0.28
2.70	-	2.89	=	0.14	5.70	-	5.89	=	0.29

For sales larger than $5.89, tax is to be computed at straight 5 percent; one-half cent or more should be treated as one cent.

The department has adopted the following combined bracket system for state and local option sales and service tax, assuming the existence of a 5 percent state and 1 percent local option sales and service tax.

COMBINED TAX SCHEDULE

FROM		TO		TAX AMOUNT	FROM		TO		TAX AMOUNT
$0.00	-	$0.08	=	$0.00	$2.92	-	$3.08	=	$0.18
0.09	-	0.24	=	0.01	3.09	-	3.24	=	0.19
0.25	-	0.41	=	0.02	3.25	-	3.41	=	0.20
0.42	-	0.58	=	0.03	3.42	-	3.58	=	0.21
0.59	-	0.74	=	0.04	3.59	-	3.74	=	0.22
0.75	-	0.91	=	0.05	3.75	-	3.91	=	0.23
0.92	-	1.08	=	0.06	3.92	-	4.08	=	0.24
1.09	-	1.24	=	0.07	4.09	-	4.24	=	0.25
1.25	-	1.41	=	0.08	4.25	-	4.41	=	0.26
1.42	-	1.58	=	0.09	4.42	-	4.58	=	0.27
1.59	-	1.74	=	0.10	4.59	-	4.74	=	0.28
1.75	-	1.91	=	0.11	4.75	-	4.91	=	0.29
1.92	-	2.08	=	0.12	4.92	-	5.08	=	0.30
2.09	-	2.24	=	0.13	5.09	-	5.24	=	0.31
2.25	-	2.41	=	0.14	5.25	-	5.41	=	0.32
2.42	-	2.58	=	0.15	5.42	-	5.58	=	0.33
2.59	-	2.74	=	0.16	5.59	-	5.74	=	0.34
2.75	-	2.91	=	0.17	5.75	-	5.91	=	0.35

For sales larger than $5.91, tax is to be computed at straight 6 percent; one-half cent or more should be treated as one cent.

When practicable, the department will cooperate with retailers in applying either of the tax schedules set out in this rule. In no event will the schedules be administered in any manner that will result in the

collection of substantially more than 5 percent of the amount on which state sales and service tax is to be computed or substantially more than 6 percent of the amount on which one state and local option sales and service tax is to be computed, or 7 percent if a jurisdiction imposes local option sales and service tax pursuant to Iowa Code chapter 422B and the local option school infrastructure sales and services tax pursuant to Iowa Code chapter 422E in addition to the state sales tax.

The department has adopted the following combined 7 percent bracket system for state and both previously mentioned local option sales and service taxes, assuming the existence of a 5 percent state sales tax rate and local option tax rates of 1 percent each.

COMBINED 7 PERCENT TAX SCHEDULE

FROM		TO		TAX AMOUNT	FROM		TO		TAX AMOUNT
$0.00	-	$0.07	=	$0.00	$2.93	-	$3.07	=	$0.21
0.08	-	0.21	=	0.01	3.08	-	3.21	=	0.22
0.22	-	0.35	=	0.02	3.22	-	3.35	=	0.23
0.36	-	0.49	=	0.03	3.36	-	3.49	=	0.24
0.50	-	0.64	=	0.04	3.50	-	3.64	=	0.25
0.65	-	0.78	=	0.05	3.65	-	3.78	=	0.26
0.79	-	0.92	=	0.06	3.79	-	3.92	=	0.27
0.93	-	1.07	=	0.07	3.93	-	4.07	=	0.28
1.08	-	1.21	=	0.08	4.08	-	4.21	=	0.29
1.22	-	1.35	=	0.09	4.22	-	4.35	=	0.30
1.36	-	1.49	=	0.10	4.35	-	4.49	=	0.31
1.50	-	1.64	=	0.11	4.50	-	4.64	=	0.32
1.65	-	1.78	=	0.12	4.65	-	4.78	=	0.33
1.79	-	1.92	=	0.13	4.79	-	4.92	=	0.34
1.93	-	2.07	=	0.14	4.93	-	5.07	=	0.35
2.08	-	2.21	=	0.15	5.08	-	5.21	=	0.36
2.22	-	2.35	=	0.16	5.22	-	5.35	=	0.37
2.36	-	2.49	=	0.17	5.36	-	5.49	=	0.38
2.50	-	2.64	=	0.18	5.50	-	5.64	=	0.39
2.65	-	2.78	=	0.19	5.65	-	5.78	=	0.40
2.79	-	2.92	=	0.20	5.79	-	5.92	=	0.41

For sales larger than $5.92, tax is to be computed at straight 7 percent; one-half cent or more should be treated as one cent.

This rule is intended to implement Iowa Code chapters 422 and 423 as amended by 1998 Iowa Acts, chapter 1130.

701—14.3(422,423) Taxation of transactions due to rate change. The following provisions shall apply in determining whether or not a transaction is subject to an existing rate of sales or use tax or to a new rate of sales or use tax. In the examples contained in the rest of this rule, assume that a bill has been enacted into law which increases the sales and use tax rate from 4 to 5 percent and that the effective date of this bill is July 1.

14.3(1) *General principles.* A change in the sales tax rate applies to a sale of tangible personal property if delivery of the property under a contract of sale occurs on or after the effective date of the legislation which changes the rate of taxation. *Harold D. Sturtz v. Iowa Department of Revenue,* 373 N.W.2d 131 (Iowa 1985). See also *Crown Iron Works v. Commissioner of Taxation,* 214 N.W.2d 462 (Minn. 1974). The intent of the parties to the contract for sale determines when delivery occurs. However, in the event the intent is not readily established from the contract, the rules set out in the

Uniform Commercial Code (Iowa Code chapter 554) shall apply in order to determine the place of delivery.

In the examples below, so long as delivery under a contract for sale occurs on or after July 1, the 5 percent sales tax rate applies. It is not necessary that any other aspects of the sale, such as payment for the delivered property, occur on or after that date.

In the three examples immediately below, "delivery" is physical transfer of possession of the tangible personal property directly from the seller to the purchaser. However, see subrule 14.3(2) for examples of delivery which do not involve transfer of possession directly from the buyer to the seller, and subrule 14.3(3) which explains a type of delivery which does not involve any physical transfer of possession of property.

EXAMPLE A: A enters into a sales contract to purchase a riding lawn mower from B. This contract (offer and acceptance) is entered into on June 20. B delivers the lawn mower to A on June 28, and A pays B for the lawn mower on July 3. Since delivery, under the contract for sale, occurred prior to July 1, the sales tax in this example is computed at the rate of 4 percent.

EXAMPLE B: A wants to purchase a home computer from B. On June 28, A orders the computer from B and the parties agree that the contract of sale is made if and when B makes delivery of the home computer to A. B delivers the computer on July 10. In this example, the sales tax is at the rate of 5 percent because delivery was not made until July 10. It is the delivery after July 1, rather than the lack of the valid contract of sale prior to that date, which determines that the rate of tax shall be 5 rather than 4 percent.

EXAMPLE C: On May 1, A enters into a conditional sales contract with B to purchase a television set. The contract requires A to make monthly installment payments for 36 months, beginning June 1. The contract also requires B to deliver the television to A on or before July 15. B retains title to the television set solely for the purpose of securing payment from A. A makes the first monthly payment to B on June 1. B delivers the television to A on the last day allowable, July 15. The 5 percent rate will apply. See subrule 14.3(4) for more material regarding conditional sales.

14.3(2) *Shipment by carrier.* The following principles shall be used to determine the conditions under which delivery is made pursuant to a contract for sale when the retailer utilizes a carrier to ship tangible personal property to a purchaser. If the contract for sale makes no reference of an F.O.B. (free on board) or F.A.S. (free along side) point or of any other point at which title and risk of loss with regard to the tangible personal property are transferred from the retailer to the purchaser and contains no other indication of a delivery point, it shall be presumed that delivery of the property occurs when the seller transfers possession of the property to the carrier. If property is sold under a C.I.F. (cost, insurance and freight) or a C. & F. (cost and freight) contract it shall also be presumed that delivery occurs when the retailer transfers possession of the property to the carrier. If a contract for sale makes mention of an F.O.B. or F.A.S. point, it shall be presumed that the parties intended delivery of the property at the time the property reaches that point.

14.3(3) *Constructive delivery.* "Constructive delivery" has occurred if the retailer and the purchaser agree that title, risk of loss, and right of possession to tangible personal property have passed from the retailer to the purchaser; that is, the parties agree that a sale has occurred, but actual physical possession of the property remains with the retailer or someone other than the buyer after the sale. If parties to a contract of sale have agreed upon constructive delivery, the sale occurs at the time of constructive delivery and not at the time of transfer of physical possession of the property from buyer to seller or at an F.O.B., F.A.S., or similar type of point.

EXAMPLE: A owns an art gallery in Des Moines. Art collector B from Cedar Rapids visits the gallery. Collector B wishes to purchase a painting that is very large. However, collector B cannot immediately transport the painting back to Cedar Rapids. On June 1, A and B sign a contract for the sale of the painting. Title to the painting, risk of loss, and the right to take possession of the painting immediately pass to B. However, the parties also agree that B can store the painting with A in return for a small monthly charge. B inquires of various parties whether or not they would be willing to transport the painting from Des Moines to Cedar Rapids. B finds no one satisfactory to do this and eventually signs a separate contract for transport with A in which A agrees to do the transporting. The transport of the

painting is accomplished on September 1. The painting was delivered from A to B in Des Moines on June 1. Thus, its sale occurred on that date rather than September 1. Delivery was accomplished with the "constructive" delivery which occurred on June 1 rather than by the physical transfer of possession from A to B which occurred on September 1. Because of this, the rate of tax is 4 and not 5 percent.

14.3(4) *Conditional sales.* A "conditional sale" is no different from an absolute sale, except in the matter of payment. *Hansen v. Kuhn,* 284 N.W. 249, 226 Iowa 794 (1939). A conditional sale has not occurred until delivery under a contract of conditional sale has occurred. *Greenlease-Lied Motors v. Sadler,* 249 N.W. 383, 216 Iowa 302 (1933); *Universal Credit Co. v. Mamminga,* 243 N.W. 513, 214 Iowa 1135 (1932); and *Firestone Tire & Rubber Co. v. Anderson,* 180 N.W. 273, 190 Iowa 439 (1920). See Example C in subrule 14.3(1) for an example of a conditional sales contract in which delivery of the property under the contract occurred long after the making of the contract and after the buyer had made several payments under the contract. As soon as delivery has occurred, tax on all gross receipts of the sale is due to the department. See rules 701—15.1(422) and 701—16.47(422) for additional material on conditional sales.

14.3(5) *Use tax—changed rate of taxation on the use of tangible personal property.* A changed use tax rate applies to the use of tangible personal property in Iowa when the first taxable use occurs on or after the effective date of the legislation which changes the rate of tax. In the following example, assume that the change in the use tax rate is from 4 to 5 percent and that the legislation which enacts this change is effective as of July 1.

EXAMPLE: On May 24, A and B enter into a contract for A's purchase of a machine from B. Under the contract, delivery of the machine to A is to occur outside the state of Iowa, F.O.B., Minneapolis, Minnesota. On June 27, A takes delivery of the machine in Minneapolis. A then transports the machine into Iowa on July 2. A's transport of the machine into Iowa constitutes a use of the machine by A in Iowa for the first time. Under these circumstances, the machine is subject to the 5 percent rate since the tax rate in effect at the time of first use, July 2, governs if property is purchased outside of Iowa. *City of Ames v. State Tax Commission,* 246 Iowa 1016, 71 N.W.2d 15 (1955).

14.3(6) *Changed rate for the sales tax on enumerated services.* A changed sales tax rate on enumerated services applies if services are rendered, furnished, or performed in Iowa on or after the effective date of the legislation which changes the rate. The date upon which the parties enter into a service contract is not of importance in determining whether the old rate or new rate is applicable. Nor, for the purpose of computing the sales tax, is it important to know when the product or result of the service is used by the ultimate user. This situation must be distinguished from the application of use tax to services. For use tax purposes, the date when the product or result of the service is used may be important. See subrule 14.3(7). For the purposes of this subrule and subrules 14.3(7), 14.3(8), 14.3(9) and 14.3(10), assume that the rate of tax is being raised from 4 to 5 percent and that the effective date of the legislation which increases the rate is July 1.

EXAMPLE A: On June 1, A and B enter into a service contract in which B agrees to provide testing laboratory services to A. B performs these services in Iowa on June 26. The results of these services are forwarded to A on July 8, and A observes those results and makes use of them on that latter day. Under these circumstances, the testing laboratory services were subject to service tax at the rate of 4 percent because B rendered, furnished, or performed the services on June 26, which is prior to July 1.

EXAMPLE B: On June 1, B offers to perform testing laboratory services for A. A and B agree that the offer is not accepted until B actually performs the test laboratory services. The services are performed on July 5 and the results forwarded to A on July 8. Under these circumstances, the testing laboratory services are subject to tax at the 5 percent rate. The services are subject to that rate because the services were rendered on July 5, and not because the parties entered into the contract for services on July 5. As in Example A above, if a contract had been entered into before July 1, and the services performed after that date, service tax at the 5 percent rate would still have been applicable.

EXAMPLE C: On June 7, A enters into a service contract with B for the repair of A's automobile. The contract provides that A shall make installment payments for 12 months. The automotive repairs are extensive. B begins repair of the automobile on June 9 and completes repair on June 27. Since sales tax is due when the service is rendered, furnished, or performed, the tax is 4 percent of the contract

price. Installment payments made on and after July 1 do not accrue any greater rate of tax. This situation is different from a service contract entered into prior to July 1, which requires periodic payments for continuous services, as set forth under subrule 14.3(8).

EXAMPLE D: A, a civic center, contracts with B, an orchestra, to perform on July 10. The contract is made on May 26. A sells tickets of admission for B's July 10 concert. The tickets are sold in the month of June and from July 1 to and including July 9. All ticket sales in June are subject to tax at the 4 percent rate and all ticket sales in July are subject to tax at the 5 percent rate. In this example, the contract between A and B is not a taxable service contract. The taxable events are the sales of admission tickets between A and the purchasers of the tickets. The date when a ticket is delivered to a purchaser controls whether the tax rate is 4 or 5 percent.

14.3(7) *Changed rate of use tax on services.* If the product or result of a taxable service rendered, furnished, or performed outside of this state is first used in this state on or after July 1, the 5 percent use tax rate applies.

EXAMPLE: On June 14, A and B enter into a contract for repair of A's machine, the repair to be done outside of Iowa. On June 28, the machine is delivered to B who performs the taxable service of machine repair and returns the machine to A in Iowa on July 1. Under these circumstances, the product or result of the taxable machine repair service is first used by A on July 1; therefore, the 5 percent tax rate applies.

14.3(8) *Service contracts requiring periodic payments.* If parties enter into a service contract prior to July 1, and the contract requires periodic payments, payments made on or after July 1 under the contract are subject to the 5 percent sales or use tax rate.

EXAMPLE A: A and B enter into an agreement for the lease of equipment on April 1. The lease is for a term of five years and requires monthly payments. A is the lessee and B is the lessor. For all rental payments made on or after July 1, the tax rate is 5 percent.

EXAMPLE B: On May 1, A joined a private club and paid membership fees for the privilege of participating in athletic sports provided to club members. A must make periodic payments every three months. These payments are made in January, April, July, and October. Under these circumstances, A's July payment and payments made subsequently are subject to tax at the rate of 5 percent.

14.3(9) *Gas, electricity, water, heat, solid waste collection, sewer, pay television, and communication services.* Gross receipts from the sales, furnishing, or service of gas, electricity, water, heat, and communication service are subject to the sales, services, and use tax at the 5 percent rate when the date of billing the customer falls on or after July 1. The gross receipts from the services of solid waste collection and disposal, sewer, and pay television are also treated in this manner.

EXAMPLE A: A is the customer of the B water utility. A receives a bill from B on July 5. The billing date is July 1, and the bill is for water provided during the month of June. Under these circumstances, sales tax should be billed at the rate of 5 percent, because the date of billing is July 1.

EXAMPLE B: A is the customer of the B electric utility company. A receives a bill from the B company on July 2. There is no billing date set forth on the bill. The bill was mailed by the B company to A on June 28. Under these circumstances, the billing date is June 28, and the sales tax should be billed at the rate of 4 percent. Had B listed a billing date in its books and records as a receivable different than the mailing date, i.e., June 26, this latter date (June 26) would be considered the billing date.

EXAMPLE C: A is the customer of the B rural electric cooperative (REC). A is responsible for reading its meter and remitting the proper amount for electricity and sales tax to B. B, in its tariff filed with the Interstate Commerce Commission (ICC), has set forth the first date of each month as the last day for its customers to read their meters. B does not send a bill to A. Under these circumstances of customer self-billing where no bill is sent by B to A, the first date of each month is the billing date and where that date falls on July 1 and the first date of each month thereafter, the sales tax should be paid at the rate of 5 percent.

If the date set forth in the tariff had been the last day of the month, then a self-billing attributable to June 30 would require payment of sales tax at the 4 percent rate.

EXAMPLE D: A is the customer of B telephone company. A receives a bill from B company on July 3, covering intrastate long distance telephone calls in June and local service in July. The billing date

on the face of the bill is June 28. Under these circumstances, all telephone services, local and intrastate long distance, should be billed sales tax at the rate of 4 percent.

If, in this example, the billing date on the bill had been July 1, the sales tax should be billed at the rate of 5 percent for all telephone services, local and intrastate long distance.

14.3(10) *Vehicles subject to registration.* The 5 percent use tax rate applies to motor vehicles subject to registration when the purchaser of the vehicle registers the vehicle on or after July 1.

EXAMPLE A: A purchases a motor vehicle from B and takes possession of the vehicle in Iowa on June 28. On July 1, A drives to the office of the county treasurer, applies for registration of the vehicle, and tenders the amount of Iowa use tax. Under these circumstances, because A registered the vehicle in Iowa on July 1, the use tax rate is 5 percent.

EXAMPLE B: A and B enter into a binding contract for A to purchase from B a motor vehicle on June 26. The vehicle cannot be delivered to A until July 3, and A applies to the county treasurer for registration of the vehicle on July 5. Under these circumstances, A first registered the vehicle on July 5 and Iowa use tax is imposed at the 5 percent rate.

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

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CHAPTER 15
DETERMINATION OF A SALE AND SALE PRICE
[Prior to 12/17/86, Revenue Department[730]]

701—15.1(422) Conditional sales to be included in gross sales. When a conditional sale agreement exists the seller shall bill the purchaser for the full amount of tax due. The purchaser is obligated to pay sales tax upon delivery of the property which is the subject of the conditional sale agreement. *Harold D. Sturtz v. Iowa Department of Revenue,* 373 N.W.2d 131 (Iowa 1985). The gross receipts shall be computed on the entire contract price except interest and finance charges when separately stated and reasonable in amount, and the seller shall remit the tax to the department at the close of the period during which delivery under the contract for the sale was made.

This rule is intended to implement Iowa Code sections 422.42(2) and 422.42(3).

701—15.2(422,423) Repossessed goods. When tangible personal property which has been repossessed either by the original seller or by a finance company is resold to final users or consumers, the gross receipts from those sales are subject to tax.

A retailer repossessing previously sold merchandise shall be entitled to claim a credit on tax paid for bad debts in the same fashion as any other retailer who has paid tax to the department upon gross receipts which ultimately constitute bad debts. See rule 15.4(422,423) for a description of the circumstances under which bad debts are and are not allowed as a credit on tax paid.

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

701—15.3(422,423) Exemption certificates, direct pay permits, fuel used in processing, and beer and wine wholesalers.

15.3(1) *General provision.* The gross receipts from the sale of tangible personal property to a purchaser for any exempt purpose are not subject to tax as provided by the Iowa sales and use tax statutes. In addition, a seller of tangible personal property need not collect Iowa sales or use tax from a purchaser that possesses a valid direct pay permit issued by the department of revenue. However, the following are requirements for the exemption and noncollection of tax by a seller when a direct pay permit is involved:

a. Prior to July 1, 2004, the sales tax liability for all sales of tangible personal property was upon the seller unless the seller took in good faith from the purchaser a valid exemption certificate stating that the purchase was for an exempt purpose or the tax would be remitted directly to the department by the purchaser under a valid direct pay permit issued by the department. In addition to the provisions and requirements set forth in subrule 15.3(2), to be valid an exemption certificate issued by a purchaser to a seller in good faith under a direct pay permit must have included the purchaser's name, direct pay permit number, and date the direct pay permit was issued by the department. A seller who has taken a valid exemption certificate under a direct pay permit must keep records of sales made in accordance with rule 701—11.4(422,423). For more information regarding direct pay permits, see rule 701—12.3(422). Where tangible personal property or services have been purchased tax-free pursuant to a valid exemption certificate which was taken in good faith by the seller, and the tangible personal property or services were used or disposed of by the purchaser in a nonexempt manner, or the purchaser failed to pay tax to the department under a direct pay permit issued by the department, the purchaser was solely liable for the taxes and must remit the taxes directly to the department.

When a processor or fabricator purchases tangible personal property exempt from the sales or use tax and subsequently withdraws the tangible personal property from inventory for its own taxable use or consumption, the tax shall be reported in the period when the tangible personal property was withdrawn from inventory.

b. As of July 1, 2004, the requirement of "good faith" on the part of a seller is replaced by a different standard. For sales occurring on and after that date, 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 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, or the seller is not obligated to collect tax due, or unless the seller takes a fuel exemption certificate. If the tangible personal property or services are purchased tax-free pursuant to a valid exemption certificate 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. The protection afforded a seller by this paragraph does not apply to a seller who fraudulently fails to collect tax or to a seller who solicits purchasers to participate in the unlawful claiming of an exemption.

c. The director is required to provide exemption certificates to assist retailers in properly accounting for nontaxable sales of tangible personal property or services to buyers for exempt purposes. These exemption certificates must be completed as to the information required on the form in order to be valid.

15.3(2) *Retailer-provided exemption certificates.* Retailers may provide their own exemption certificates. Those exemption certificates must contain information required by the department, including, but not limited to: the seller's name, the buyer's name and address, the buyer's nature of business (wholesaler, retailer, manufacturer, lessor, other), the reason for purchasing tax-exempt (e.g., resale or processing), the general description of the products purchased, and state sales tax or I.D. registration number. The certificate must be signed and dated by the buyer.

a. An exemption certificate or blanket exemption certificate as referred to in paragraph *"b"* cannot be used to make a tax-free purchase of any tangible personal property or service not covered by the certificate. For example, the certificate used to purchase a chemical consumed in processing cannot be used to purchase a generator which is going to become an integral part of other tangible personal property which will be ultimately sold at retail.

b. Any person repeatedly selling the same type of property or service to the same purchaser for resale, processing, or for any other exempt purpose may accept a blanket certificate covering more than one transaction. A seller who accepts a blanket certificate is required periodically to inquire of the purchaser to determine if the information on the blanket certificate is accurate and complete. Such an inquiry by the seller shall be deemed evidence of good faith on the part of the seller.

c. When due to extraordinary circumstances in the nature of fire, flood, or other cases of destruction beyond the taxpayer's control, a seller does not have an exemption certificate on file, the seller may show by other evidence, such as a signed affidavit by the purchaser, that the property or service was purchased for an exempt purpose.

d. The liability for the tax does not shift from the seller to the purchaser if the seller has not accepted a valid exemption certificate in good faith. If the seller has actual knowledge of information or circumstances indicating that it is unlikely that the property or services will be used by the purchaser in an exempt manner, then in order to act in good faith the seller must make further inquiry to determine the facts supporting the exemption certificate. In addition, if the nature of the business of the purchaser, as shown by the exemption certificate, indicates that it is unlikely that the property or services will be used in an exempt manner, then in order to act in good faith the seller must make further inquiry to determine the facts supporting the exemption certificate.

EXAMPLE 1. A seller is expected to inquire to discover the facts supporting the claimed exemption if the seller knows that the property or services will not be, or it is unlikely that the property or services will be, resold or used in processing by that purchaser. This further inquiry is expected even when there is nothing in the nature of the business as shown on the valid exemption certificate to cause the seller to make further inquiry.

EXAMPLE 2. A seller is expected to inquire to discover the facts supporting the claimed exemption of the sale of sawdust or a tool chest purchased by a gas station since such items are rarely resold by a gas station.

EXAMPLE 3. A seller is not expected to make further inquiry, in the absence of actual knowledge, to determine which light bulbs bought by a hardware store are for use in the store or those purchased for resale.

If the seller has met the requirements set forth above in accepting a valid exemption certificate, the seller shall be deemed to have acted in good faith and the liability for the tax shifts to the purchaser who becomes solely liable for the taxes.

e. A seller is relieved from liability for sales tax if (1) a purchaser deletes the tax reimbursement from the payment to the seller or if the purchaser makes a notation on an invoice such as "not subject to tax" or "resale" and (2) if the seller can produce written evidence to show that an attempt was made to obtain an exemption certificate to show that the transaction was exempt from tax but was unable to obtain said certificate from the purchaser.

f. The failure of a permit holder to act in good faith while giving or receiving exemption certificates may result in the revocation of the sales tax permit. Revocation is authorized under the provisions of Iowa Code section 422.53(5).

g. The purchase of tangible personal property or services which are specifically exempt from tax under the Iowa Code need not be evidenced by an exemption certificate. However, if certificates are given to support these transactions, they do not relieve the seller of the responsibility for tax if at some later time the transaction is determined to be taxable.

h. A person who is selling tangible personal property or services, but who is not making taxable sales at retail, shall not be required to hold a permit. When this person purchases tangible personal property or services for resale, the person shall furnish a certificate in accordance with these rules to the supplier stating that the property or services was purchased for the purpose of resale.

i. For information regarding the use of exemption certificates for contractors, see 701—Chapter 19.

15.3(3) *Fuel exemption certificates.*

a. Definitions.

"Fuel" includes, but is not limited to, heat, steam, electricity, gas, water, or any other tangible personal property consumed in creating heat, power, or steam.

"Fuel consumed in processing" includes fuel used in grain drying, providing heat or cooling for livestock buildings, fuel used for generating electric current, fuel consumed in implements of husbandry engaged in agricultural production, as well as fuel used in "processing" as defined in rules 701—18.29(422,423) and 701—18.58(422,423). See rule 701—17.2(422) for a detailed description of "fuel used in processing." See rule 701—17.3(422,423) for extensive discussion regarding electricity and steam used in processing.

"Fuel exemption certificate" is a certificate given by a purchaser and signed under penalty of perjury to assist a seller in properly accounting for nontaxable sales of fuel consumed in processing. The fuel exemption certificate must contain information required by the department, including, but not limited to: the seller's name and address; the purchaser's name and address; the type of fuel purchased, e.g., electricity, propane; a description of the purchaser's business, e.g., farmer, manufacturer of steel products, food processor; a general description of the type of processing in which the fuel is consumed, e.g., grain drying, raising livestock, generating electricity, or manufacture of tangible personal property; and the percentage exemption claimed. The fuel exemption certificate must be signed under penalty of perjury by the purchaser and dated. The seller may demand from the purchaser additional documentation attached to the fuel exemption certificate which is reasonably necessary to support the claim of exemption for fuel consumed in processing. In the absence of separate metering, documentation reasonably necessary to support a claim for exemption will consist of either an electrical consultant's survey or of a document prepared by the purchaser in accordance with the requirements of subrule 15.3(4). Attachment of documentation is not necessary if the purchaser has furnished the seller with documentation when filing an earlier exemption certificate and a substantial change in the purchaser's operation had not occurred since the documentation was furnished or if fuel consumed by the purchaser in processing is separately metered and billed by the seller.

"Substantial change" means a change in the purchaser's use or disposition of tangible personal property and services such that the purchaser pays less than 90 percent of the purchaser's actual sales tax liability.

b. If fuel is purchased tax-free pursuant to a fuel exemption certificate which has been accepted by the seller and the purchaser uses or disposes of the fuel in a nonexempt manner, the purchaser is solely liable for sales tax and shall remit that tax directly to the department. A seller can, however, rely upon a fuel exemption certificate for sales occurring within five years subsequent to the date of the certificate only. For later sales, the seller must secure a new certificate of exemption from the purchaser.

c. A purchaser may apply to the department for review of any fuel exemption certificate. The department shall review the certificate and determine the correct amount of exemption within 12 months from the date of application. The department shall notify a purchaser of any determination that is different from the purchaser's claim of exemption. Failure to determine the correct amount of exemption within 12 months from the date of application shall constitute a determination on the department's part that the claim of exemption on the fuel certificate is correct as submitted. A determination regarding an exemption certificate is final unless the purchaser appeals to the director for a revision of the determination within 60 days from 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 is final unless the purchaser seeks judicial review of the director's decision under Iowa Code section 422.55 within 60 days from the date of the notice of the director's decision. The purchaser must notify the seller of any change in percentage.

d. The effective date of the legislation allowing use of an exemption certificate for fuel used in processing is January 1, 1988. However, a certificate which is complete and correct according to subrule 15.3(3), paragraph *"a,"* and any other requirement of the director, which is signed and dated prior to January 1, 1988, shall, if accepted by a seller in good faith, protect the seller to the extent described in subrule 15.3(3), paragraph *"b,"* for energy consumed on or after January 1, 1988. Exemption certificates filed with the seller prior to January 1, 1988, also expire five years from date of acceptance.

15.3(4) *Determining percentage of electricity used in processing.* When electricity is purchased for consumption both for processing and for taxable uses, and the use of the electricity is recorded on a single meter, the purchaser must allocate the use of the electricity according to taxable and nontaxable consumption if an exemption for nontaxable use is to be claimed. The calculations which support the allocation, if properly performed, can serve as the documentation reasonably necessary to support a claim of exemption for fuel used in processing. The following method with its alternative table may be used to determine the percentage of electricity used on the farm or in a factory which is exempt by virtue of its being used in processing. See subrule 15.3(4), paragraph *"e,"* for alternative methods of computing exempt use, including exempt use by a new business. First, the base period for the calculations must be selected.

a. Ordinarily, the 12 months previous to the date upon which the exemption is calculated are used as the base period for determining the percentage of electricity exempt as used in processing. This immediately previous 12-month period is used because it is a span of time which is (1) recent enough to accurately reflect future electric usage; (2) extended enough to take into account variations in electrical usage resulting from changes in temperature occurring with the seasons; and (3) is not so long as to require unduly burdensome calculations. However, individual circumstances can dictate that a shorter or longer period than 12 months will be used or that some 12-month period other than that immediately previous to the date upon which the exemption certificate is filed, will be used.

EXAMPLE: Mr. Wilson is a farmer. He files an exemption certificate for the period beginning January 1, 1990. The year 1989 is one with a very mild winter, a relatively cool summer, and a very dry autumn. Mr. Wilson uses no electricity for grain drying and substantially less electricity than usual for heating and cooling his livestock buildings. Mr. Wilson must use a 12-month period which is more representative of his usual exempt electrical consumption than that of January through December 1989.

EXAMPLE: Mr. Jackson is also a farmer. He files an exemption certificate for the period beginning January 1, 1991. The year 1990 is one in which the summer is extraordinarily hot, the winter exceedingly cold, and the autumn very wet. Mr. Jackson uses far more electricity than normal to dry his grain and heat and cool his livestock buildings. He should use a 12-month period more representative of his customary exempt use of electricity than the period January through December 1990.

EXAMPLE: Company A manufactures its product in a factory which has no windows and is heavily insulated. The factory always runs 40 hours per week, 52 weeks per year. Because of these and other circumstances, Company A's electrical usage does not vary significantly from month to month, and it is easy enough to document this. Company A can calculate its percentage of exempt use of electricity based on a one-month, rather than a 12-month, period.

EXAMPLE: Company B manufactures widgets. The "economic cycle" for widget production is, on the average, 36 months long. During this economic cycle, there are times when, for months at a time, the factory will operate three shifts. At other times, for weeks at a time, the entire factory will be shut down and its personnel laid off. The only accurate way to determine exempt percentage of electricity used is to calculate electrical use over the entire economic cycle. Therefore, 36 months, rather than 12 months, would be the base period.

b. Calculating kilowatts used per hour by various electrical devices. The first step in computing percentage of exemption is to determine the number of kilowatts used per hour for each device in farm or factory. If kilowatts consumed per hour of a device's use is not listed on the device or otherwise readily obtainable, formulas can be used to determine this information.

Lights

For incandescent bulbs, add rated wattages and divide by 1,000. For fluorescent lights, add rated wattages plus an additional 20 percent of rated wattages, then divide by 1,000.

Incandescent Lights:

$$\frac{\text{Watts}}{1{,}000} = \text{Kilowatts Per Hour}$$

Fluorescent and Other High Intensity Lights:

$$\frac{\text{Watts} + .20\ (\text{Watts})}{1{,}000} = \text{Kilowatts Per Hour}$$

Devices Other Than Lights

For these devices, use the wattage rating given by the manufacturer and divide by 1,000 to obtain approximate kilowatts used per hour of operation.

$$\frac{\text{Watts}}{1{,}000} = \text{Kilowatts Per Hour}$$

If an appliance does not list a watt rating, tables provided by Iowa State University Cooperative Extension Service can be used especially by farmers who are attempting to compute their exempt percentage of electricity used. Persons using a table are reminded to convert watts to kilowatts before proceeding to further calculations.

c. The average number of kilowatts consumed per hour of operation for any one device must next be multiplied by the total number of hours which the device is operated during the base period. A person may use intermediate calculations. For example, assume that a machine used in processing consumes 20 kilowatts per hour of operation. The machine is operated, during a 12-month base period, 40 hours per week during 50 weeks. The machine is not placed in operation when the factory is closed for two weeks vacation. Exempt use is calculated as follows:

Kilowatts Per Hour		Hours Operated Per Week		Weeks Operated in 12-Month Period Equals Number of Exempt Kilowatt Hours
20	×	40	×	50 = 40000

Assume that a grain dryer uses 30 kilowatts per hour of operation. During a 12-month base period, the grain dryer is used in processing 200 hours per month, for 3 months. The calculation for total number of kilowatt hours of exempt use for the 12-month period is as follows:

Kilowatts Per Hour		Hours of Exempt Use Per Month		Number of Months of Exempt Use Equals Total Number of Exempt Kilowatt Hours
30	×	200	×	3 = 18000

d. The following is a very simplified example of a worksheet for determining the percentage of electricity qualifying for exemption when a single meter records both exempt and taxable use.

	Kilowatts Per Hour of Operation	Average Hours of Operation Per 12-Month Base Period	Average Kilowatt Hours Per 12-Month Base Period	Total
All Exempt Usage				
Production Machine #1	10	1000	10000	
Production Machine #2	10	1000	10000	
Other	10	1000	10000	
Total Exempt Usage				30000(A)
All Taxable Usage				
Air Conditioners	10	3000	30000	
General Lighting	10	3000	30000	
Office Equipment	10	3000	30000	
Space Heaters	10	3000	30000	
Other	10	3000	30000	
Total Taxable Usage				150000(B)
Total—All Usages				180000(C)

$$\frac{30000}{180000} \text{ or } \frac{A}{C} = \text{Percentage of Electricity Purchase Qualifying for Exemption} = 16.60\%$$

The number actually used in the base period can be determined by reference to billings for the base period. If the number of kilowatt hours calculated to have been used does not approximate the number actually used in the base period, the calculations are deficient and should be performed again. Once the precise percentage of exemption has been calculated, that percentage must be applied during any period for which a purchaser is requesting exemption. Any substantial and permanent change in the amount of electricity consumed or in the proportion of exempt and nonexempt use of electricity is an occasion for recomputing the exempt percentage and for filing a new exemption certificate.

e. The following are nonexclusive alternatives to the above method of determining the percentage of electricity which is exempt because it is used in processing. First, if currently only one meter exists to measure both exempt and nonexempt use of electricity, the most accurate method of determining exempt and nonexempt use may be separate metering of these two uses. This possibility is especially practical

if all exempt use results from the activities of one machine, however large. If separate metering is impossible or impractical, it may be useful to employ the services of an energy consultant. If using energy consultant's service is impractical, it may be possible to secure, from the manufacturer of a machine used in processing, the number of kilowatts which a machine uses per hour of operation. Often, these manufacturer's studies give a more accurate measure of a machine's use of electricity than the formulas set out in paragraph 15.3(4)*"b"* above. This circumstance is especially true with regard to large electric motors.

If a business is new, and no historical data exists for use in calculating exempt and nonexempt percentages of electricity or other fuel consumed, any person calculating future exempt use must make the best projections possible. If calculating future exempt use with no past historical data to serve as a basis for the calculations, it is suggested that conservative estimates of exempt use be made. Using these conservative estimates can avoid future liability for sales tax on the part of the purchaser of the electricity. Possibly, in calculating exempt use of fuel for a new business, historical data from existing similar businesses can be used if available from persons not in direct competition to the person claiming the exemption.

Ordinarily any method of determining the percentage of electricity used in processing will involve calculating both exempt and nonexempt usage. However, in certain instances it is acceptable to calculate only exempt or nonexempt usage in one column and to list separately the equipment or devices making the exempt or nonexempt use of the electricity separate. This practice can normally be followed where electrical usage does not fluctuate dramatically and where usage is either predominantly exempt or predominantly not exempt.

15.3(5) *Applicability.* The provisions of subrule 15.3(4) explaining the determination of the percentage exemption for electricity also apply to other types of fuel such as natural gas, LP, etc., when used for exempt purposes.

15.3(6) *Special certificates of beer and wine wholesalers.* Beer or wine purchased from a wholesaler holding a Class A or F permit has been purchased for resale if the purchaser provides the wholesaler with a retail beer or wine permit or liquor license number. A wholesaler's record of account with an individual retailer is a complete and correct exemption certificate for the purposes of beer or wine sales and provides all the protection which the usual exemption certificate (see subrule 15.3(2)) provides if the record of account contains the retailer's beer or wine permit or liquor license number and all other information concerning the account is taken in good faith by the wholesaler. The words "beer," "permit," "retailer," "wholesaler," and "wine" have the same definitions for the purposes of this rule as the definitions given them in Iowa Code section 123.3.

This rule is intended to implement Iowa Code sections 422.42(3), 422.42(13), 422.42(16), 422.47, 422.53 as amended by 1997 Iowa Acts, House File 266, and 423.1(1).

701—15.4(422,423) Bad debts. Bad debts shall be allowed as a credit on tax when all the following facts have been shown:

15.4(1) Tax has been previously paid on the gross receipts from the accounts on which the taxpayer claims credit for tax.

15.4(2) The accounts have been found to be worthless.

15.4(3) The taxpayer has records to show that the accounts have actually been charged off for income tax purposes.

Credit for bad debts shall not be allowed on merchandise which was exempt from tax when sold.

When credit on tax has been taken on account of bad debts and the debts are subsequently paid, the proceeds from the collection of such accounts shall be included in the gross receipts for the period in which payment is made.

Effective July 1, 1992, the sales and use tax rate increased from 4 percent to 5 percent.

Bad debts which occur prior to July 1, 1992, and are charged off on or after July 1, 1992, may be charged off at the tax rate of 5 percent. Bad debts which have been charged off prior to July 1, 1992,

and all or any part of the bad debt is recovered after July 1, 1992, will be subject to tax at the rate of 5 percent. All the provisions of this rule and rule 15.5(422,423) apply.

This rule is intended to implement Iowa Code sections 422.42(16), 422.46, and 423.1(10).

701—15.5(422,423) Recovery of bad debts by collection agency or attorney. When bad debts have been charged off and later recovered in whole, or in part, through the services of a collection agency or an attorney, the full amount of the debt recovered shall be included with the gross sales for the period which the collection was made. The services of an agency or attorney are services purchased by a retailer and shall not reduce the gross amount collected for the retailer by the agency or attorney.

This rule is intended to implement Iowa Code sections 422.42(16), 422.46, and 423.1(10).

701—15.6(422,423) Discounts, rebates and coupons.

15.6(1) *Discounts.* A discount is an abatement from the face of an account, with the remainder being the actual purchase price of the goods charged in the account. The purchaser entitled to the discount will never owe the face of the bill as a debt—this being the net of the bill after the agreed discount has been deducted. The word "discount" means "to buy at a reduction." *Benner Tea Company v. Iowa State Tax Commission,* 252 Iowa 843, 109 N.W.2d 39 (1961).

Any discount allowed by a retailer and taken on taxable sales is a proper deduction when collecting and reporting tax. This is not the case when the retailer offers a discount to a purchaser but bills and collects tax on the gross charge rather than on the net charge. The customer must receive the benefit of the discount, for sales tax purposes, in order for the retailer to exclude it from gross receipts.

Certain retailers bill their customers on a gross and net basis, with the difference considered to be a discount for payment purposes. When a customer does not resolve the bill within the net payment period, tax shall apply on the gross charge shown on the billing.

15.6(2) *Rebates.* A rebate is a return of part of an amount paid for a product. Manufacturers' rebates are not discounts and cannot be used to reduce the gross receipts received from a sale or reduce the purchase price of a product. This rule applies even though the rebate is used by the seller to reduce the selling price or is used by the purchaser as a down payment. The rebate is considered a transaction between the manufacturer and the purchaser. See 1972 O.A.G. 332.

15.6(3) *Coupons.* Coupons issued by the producer of a product are not discounts and cannot be used as an abatement from the face of the account. Coupons issued by the retailer which actually reduce the price of the product to the purchaser are treated as a discount as per subrule 15.6(1). *Saxon-Western Corporation v. Mahin,* 369 N.E.2d 1185 (Ill. 1979).

EXAMPLE: C acquires a 30¢ off coupon issued by manufacturer of A-B Bandaids for A-B Bandaids which can be redeemed at a store which sells the product. C goes to store D and purchases a box of A-B Bandaids which shows a price of $1.50. C pays $1.20 + the 30¢ coupon. D is reimbursed the 30¢ for the coupon by the manufacturer. Tax is due on the $1.50 because C's total gross receipts are $1.50. The coupon is not used as a discount in this situation.

EXAMPLE: E offers a two for the price of one coupon for its super hamburger. Each hamburger normally sells for $2.00 each. The coupon can only be redeemed at E's retail store. F acquires the coupon and redeems it at E's store. The purchase price for F was $2.00 for both hamburgers. The tax is due on the $2.00 because this amount is the gross receipts for E, even though the value of the two hamburgers would normally be $4.00. In this situation, the sales price for the two hamburgers was $2.00.

This rule is intended to implement Iowa Code sections 422.42(6) and 423.1(3).

701—15.7(422,423) Trading stamps are not a discount. Rescinded IAB 11/14/01, effective 12/19/01.

701—15.8(422,423) Returned merchandise. When merchandise is sold and returned by a customer who secures an allowance or a return of the full purchase price, the seller may deduct the amount allowed as full credit or refund, provided the merchandise is taxable merchandise and tax has been previously paid on the gross receipts.

An allowance shall not be made for the return of any merchandise which (1) is exempt from either sales or use tax; or (2) has not been reported in the taxpayer's gross receipts and tax previously paid.

This rule is intended to implement Iowa Code sections 422.42(6) and 423.1(3).

701—15.9(422) Goods damaged in transit. If goods shipped by a retailer have been delivered under a contract for sale to a consumer, and thereafter the goods are damaged in the course of transit to the consumer, the retailer shall be liable for tax upon the full sale price of the goods, as the sale to the consumer has been completed. *Harold D. Sturtz v. Iowa Department of Revenue,* 373 N.W.2d 131 (Iowa 1985).

If the goods have not been delivered to the consumer, the sale to the consumer has not been completed, and the retailer shall not be taxed for the amount agreed to be paid by the consumer.

EXAMPLE: A company in Chicago transports furniture in its own truck to customer B in Des Moines. Under the contract of sale, delivery of the furniture would occur in Des Moines and sales tax would ordinarily be due upon the gross receipts of the sale. However, in East Moline, Illinois, the furniture truck is involved in an accident, and B's furniture is destroyed. There was no delivery of the furniture to B, thus no sale to B and thus no sales tax is due. Had the point of delivery been Chicago, Illinois, a sale would have occurred outside this state, but no use tax would be due because B never made any "use" of the furniture in Iowa.

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

701—15.10(422) Consignment sales. When a retailer receives tangible personal property on consignment from others and the consigned merchandise is sold in the ordinary course of business with other merchandise owned or services performed by the retailer, the retailer or consignee shall be making sales at retail. In these cases, the consignee shall file a return and remit tax to the department along with the returns and remittances of gross receipts from the sale of other merchandise.

Sale of tangible personal property by an agent or consignee for another person shall be exempt if the sales meet the requirements of a casual sale or any other exemptions.

This rule is intended to implement Iowa Code sections 422.42 and 423.43.

701—15.11(422,423) Leased departments. When a permit holder leases a part of the premises where the permit holder's retail business is conducted, the lessor shall immediately notify the department and supply the following information: (1) name and home office address of the lessee; (2) type of merchandise sold by the lessee or service performed; (3) date when the lessee began making sales or performing services at retail in Iowa on the leased premises; and (4) whether the lessee has secured a permit to account directly to the department for tax due or if the lessee's sales will be accounted for in the lessor's tax return. Upon request, the department shall furnish a form to the lessor on which to report this information.

If the lessor fails to notify the department that a part of the premises has been leased and does not furnish the requested information, the lessor shall be responsible for tax due as a result of sales by the lessee, unless the lessee has properly remitted the tax due.

The lessor who has leased a part of the premises shall report to the department the names and addresses of all lessees. If the lessor is accounting for the lessee's sales, the lessor shall, after the name of each lessee, show the amount of net taxable sales made by the lessee and which net taxable sales are included in the lessor's return. If the lessee is reporting the tax directly to the department, the lessor shall show the permit number of the lessee.

When the lessee has terminated selling activities, the lessor shall immediately notify the department.

This rule is intended to implement Iowa Code sections 422.68(1) and 423.23.

701—15.12(422,423) Excise tax included in and excluded from gross receipts.

15.12(1) An excise tax which is not an Iowa sales or use tax may be excluded from the gross receipts or purchase price of the sale or use of property or taxable services only if all of the following conditions exist:

a. The excise tax is imposed upon the identical sale which the Iowa sales tax is imposed upon or upon the sale which measures the taxable use or upon a use identical to the Iowa taxable use and not upon some event or activity which precedes or occurs after the sale or use.

b. The legal incidence of the excise tax falls upon the purchaser who is responsible for payment of the Iowa sales tax. The purchaser must be obligated to pay the excise tax either directly to the government in question or to another person (e.g., the retailer) who acts as a collector of the tax. See *Gurley v. Rhoden,* 421 U.S. 200, 95 S. Ct. 1605, 44 L.Ed.2d 110 (1975) for a description of the circumstances under which the legal, as opposed to the economic, burden of an excise tax falls upon the purchaser.

c. The name of the tax is specifically stated and the amount of the tax separately set out on the invoice, bill of sale, or upon another document which embodies a record of the sale.

EXAMPLE 1. The federal government imposes an excise tax upon the act of manufacturing tangible personal property within the United States. The amount of the tax is measured as a percentage of the price for the first sale of the property, which is usually to a wholesaler. However, one particular manufacturer sells its manufactured goods at retail in Iowa. Even if this tax meets the requirements for exclusion of paragraphs *"b"* and *"c"* above, it is not excludable because it does not meet the requirements of paragraph *"a."* The tax is not imposed upon the act of sale but upon the prior act of manufacture. The tax is merely measured by the amount of the proceeds of the sale.

EXAMPLE 2. The federal government imposes an excise tax of 4 percent on a retailer's gross receipts from sales of tangible personal property. The law allows the retailer to separately identify and bill a customer for the tax. However, if a retailer fails to pay the tax, the government cannot collect it from a purchaser and if the government assesses tax against the retailer and secures a judgment requiring the retailer to pay the tax, the retailer who has failed to collect the tax from a purchaser on the initial sale has no right of reimbursement from the purchaser. This tax is not excludable from Iowa excise tax. Its economic burden falls upon the purchaser. However, since neither the government nor the retailer has any legal right to demand payment of the tax from a purchaser, the legal incidence of the tax is not upon the purchaser; and the tax would not meet the requirements of paragraph *"b"* above.

15.12(2) As of January 1, 1988, the following federal excise taxes are includable in the gross receipts of Iowa sales tax:

a. The federal gallonage taxes on distilled spirits, wines, and beer imposed by 26 U.S.C. Sections 5001, 5041, and 5051.

b. The tax imposed by 26 U.S.C. Section 5701 with regard to cigars, cigarettes, and cigarette papers and tubes.

c. The federal tax on gasoline imposed under 26 U.S.C. Section 4081.

d. The federal tax on tires, inner tubes, and tread rubber imposed by 26 U.S.C. Section 4071.

e. The federal manufacturer's excise tax imposed by 26 U.S.C. Section 4061 has been repealed.

15.12(3) The following excise taxes are excluded from the amount of gross receipts:

a. The federal tax imposed by 26 U.S.C. Section 4251(a) on the communication services of local telephone service, toll telephone service, and teletypewriter exchange service.

b. The federal tax imposed by 26 U.S.C. Section 4051 upon the first retail sale of automobile and truck chassis and bodies; truck trailer and semitrailer chassis and bodies and tractors of the kind chiefly used for highway transportation in combination with trailers or semitrailers.

This rule is intended to implement Iowa Code sections 422.42(6), 422.43, 423.1, and 423.2.

701—15.13(422,423) Freight, other transportation charges, and exclusions from the exemption applicable to these services. The determination of whether freight and other transportation charges shall be subject to sales or use tax is dependent upon the terms of the sale agreement.

When tangible personal property or a taxable service is sold at retail in Iowa or purchased for use in Iowa and under the terms of the sale agreement the seller is to deliver the property to the buyer or the purchaser is responsible for delivery and such delivery charges are stated and agreed to in the sale agreement or the charges are separate from the sale agreement, the gross receipts derived from the freight or transportation charges shall not be subject to tax. As of May 20, 1999, this exemption does not apply

to the service of transporting electrical energy. As of April 1, 2000, this exemption does not apply to the service of transporting natural gas.

When freight and other transportation charges are not separately stated in the sale agreement or are not separately sold, the gross receipts from the freight or transportation charges become a part of the gross receipts from the sale of tangible personal property or a taxable service and are subject to tax. Where a sales agreement exists, the freight and other transportation charges are subject to tax unless the freight and other transportation charges are separately contracted. If the written contract contains no provisions separately itemizing such charge, tax is due on the full contract price with no deduction for transportation charge, regardless of whether or not such transportation charges are itemized separately on the invoice. *Clarion Ready Mixed Concrete Company v. Iowa State Tax Commission,* 252 Iowa 500, 107 N.W.2d 553(1961); *Schemmer v. Iowa State Tax Commission,* 254 Iowa 315, 117 N.W.2d 420(1962); *City of Ames v. Iowa State Tax Commission,* 246 Iowa 1016, 71 N.W.2d 15(1959); *Dain Mfg. Company v. Iowa State Tax Commission,* 237 Iowa 531, 22 N.W.2d 786(1946).

Effective July 1, 2001, gross receipts from charges for delivery of electricity or natural gas are exempt from tax to the extent that the gross receipts from the sale, furnishing, or service of electricity or natural gas or its use are exempt from sales or use tax under Iowa Code chapters 422 and 423.

The exclusions from this exemption relating to the transportation of natural gas and electricity are applicable to all contracts for the performance of these transportation services. Below are examples which explain some of the principal circumstances in which the transport of natural gas or electricity is a service subject to tax.

Freight and transportation charges include, but are not limited to, the following charges or fees: freight; transportation; shipping; delivery; or trip charges.

EXAMPLE 1. Consumer ABC, located in Des Moines, contracts with supplier DEF, located in Waterloo, for DEF to sell gas and electricity to ABC. ABC then contracts with utility GHI to transport the energy over GHI's network (of pipes or wires) from Waterloo to ABC's facility in Des Moines. GHI's transport of ABC's energy is a taxable service. The transportation of natural gas and electricity by a utility is a taxable service of furnishing natural gas or electricity whether or not that utility or some other utility produces the natural gas or generates the electricity furnished. A utility's transportation of gas or electricity is a "transportation service" specifically excluded from the exemption set out in this rule.

EXAMPLE 2. Consumer ABC contracts with utility DEF for DEF to provide electricity from DEF's generating plant in Mason City to ABC's location in Cedar Rapids. Transport of the electricity is by way of DEF's network of long distance transmission lines. The contract between ABC and DEF states the prices to be paid for the purchase of various amounts of electricity and also sets out the amounts to be paid for transport of electricity as well and constitutes separate sales of electricity and transportation services. In these circumstances, amounts which ABC pays DEF for transport of the electricity are taxable gross receipts. This transportation service would ordinarily then be excluded from tax under the exemption set out in this rule; however, separate transportation charges for transportation of electricity are excluded from the exemption (as of May 20, 1999, and are thereafter taxable).

EXAMPLE 3. As in Example 2, consumer ABC contracts with utility DEF for the delivery of electricity from DEF's generating plant in Mason City to ABC's location in Cedar Rapids, ownership of the electricity to pass to ABC in Cedar Rapids. Also, as in Example 2, the contract between ABC and DEF states varying prices to be paid for the purchase and transportation of varying amounts of electricity and constitutes separate sales of electricity and transportation services. Transport of the electricity will be by way of GHI's transmission lines. DEF contracts with GHI for the transport of the electricity to ABC's plant in Cedar Rapids. At the time the contract is signed, GHI asks DEF for an exemption certificate stating that DEF will resell GHI's transportation service to ABC. GHI must either secure the certificate or collect Iowa sales tax from DEF. GHI is furnishing a taxable electricity transportation service to DEF which DEF will in turn furnish to ABC. DEF must collect tax from ABC.

EXAMPLE 4. In this example, the same contract exists between ABC and DEF as exists in Example 3. However, in this example, a breakdown at DEF's plant in Mason City prevents DEF from generating the electricity which it is contractually obligated to provide to ABC. DEF is forced to purchase both

electricity and its transport from JKL. The contract between DEF and JKL states the prices to be paid for the purchase of various amounts of electricity and also sets out the amounts to be paid for the transport of this electricity as well and constitutes separate sales of electricity and transportation services. JKL asks DEF for an exemption certificate stating that DEF has purchased the electricity and its transport for resale to ABC. In this case, JKL must secure an exemption certificate from DEF to avoid collecting tax on its sale and transport of the electricity for DEF.

EXAMPLE 5. Again, ABC and DEF have contracted, as they did in Example 2, for DEF to sell and transport electricity from Mason City to Cedar Rapids. However, their agreement mentions only one combined price for sale and delivery of the electricity. There is no separately contracted price for transport of the electricity, in contrast to the situation in Example 2. In this case, the entire amount which ABC pays to DEF is taxable as the entire amount paid is for the sale of tangible personal property. See Clarion Ready Mixed and Schemmer, generally, above.

EXAMPLE 6. Manufacturer EFG contracts with utility DEF for the purchase of natural gas with a separate contract for its delivery. The gas is to be transported from DEF's storage facility near Osceola to EFG's manufacturing plant in Fort Dodge by way of DEF's pipeline. Ownership of the gas passes from DEF to EFG in Fort Dodge. EFG uses 92 percent of the gas which is transported to its plant in processing the goods manufactured there. The receipts which EFG pays DEF for the transport of the gas are excluded from the transportation exemption, but they are not excluded from the processing exemption. Ninety-two percent of those receipts are exempt from tax because that is the percentage of gas used by EFG in processing. In addition, utility DEF charges manufacturer EFG $9.95 as a delivery fee for the gas. Since the purchase of the gas has a 92 percent exemption from Iowa sales tax because of a 92 percent usage in processing, 92 percent of the delivery charge of $9.95 is also exempt from tax.

This rule is intended to implement Iowa Code sections 422.43 and 423.2, and section 422.45 as amended by 2001 Iowa Acts, House File 705.

701—15.14(422,423) Installation charges when tangible personal property is sold at retail. When the sale of tangible personal property includes a charge for installation of the personal property sold, the current rate of tax shall be measured on the entire gross receipts from the sale. The installation charges would not be taxable if: (1) The installation service is not an enumerated service, and also (2) where a sales agreement exists, the installation charges are separately contracted. If the written contract contains no provisions separately itemizing such charges, tax is due on the full contract price with no deduction for installation charges, regardless whether or not such installation charges are itemized separately on the invoice.

If the installation services are enumerated services, the installation charges would not be taxable if: (1) The services are exempt from tax, e.g., the services are performed on or connected with new construction, reconstruction, alteration, expansion or remodeling of a building or structure; or, the services are rendered in connection with the installation of new industrial machinery or equipment. See rule 701—19.13(422, 423) and subrule 18.45(7), respectively. And also (2) where a sales agreement exists, the installation charges are separately contracted. If the written contract contains no provisions separately itemizing such charges, tax is due on the full contract price with no deduction for installation charges, regardless whether or not such installation charges are itemized separately on the invoice. If no written contract exists, the installation charges must be separately itemized on the invoice to be exempt from tax.

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

701—15.15(422) Premiums and gifts. A person who gives away or donates tangible personal property shall be deemed to be a consumer of such property for tax purposes. The gross receipts from the sale of tangible personal property to such persons for such purposes shall be subject to tax.

When a retailer purchases tangible personal property, exclusive of tax, for the purpose of resale in the regular course of business and later gives it away or donates it, the retailer shall include in the return the value of the property at the retailer's cost price.

When a retailer sells tangible personal property and furnishes a premium with the property sold, the retailer is considered to be the ultimate consumer or user of the premium furnished.

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

701—15.16(422) Gift certificates. When a retailer sells gift certificates, tax shall be added at the time the gift certificate is redeemed.

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

701—15.17(422,423) Finance charge. Interest or other types of additional charges that result from selling on credit or under installment contracts are not subject to sales tax when such charges are separately stated and when such charges are in addition to an established cash selling price. However, if a sale is made for a lump sum, the tax is due on the total selling price if finance charges are not separately stated.

When interest and other types of additional charges are added as a condition of a sale in order to obtain title rather than as a charge to obtain credit where title to goods has previously passed, such charges will be subject to tax even though they may be separately stated. *State ex. rel. Turner v. Younkers Bros., Inc.,* 210 N.W.2d 550 (Iowa 1973); *Road Machinery Supplies of Minneapolis, Inc., v. The Commissioner of Revenue,* Minnesota Tax Court of Appeals, 1977, 2 Minn. CCH State Tax Reporter II 200-835. See rule 701—16.47(422,423) relating to conditional sales contracts.

This rule is intended to implement Iowa Code sections 422.42(2) and 423.4.

701—15.18(422,423) Coins and other currency exchanged at greater than face value. Any exchange, transfer, or barter of merchandise for a consideration paid in gold, silver, or other coins or currency shall be subject to tax to the extent of the agreed-upon value of the coins or currency so exchanged. This agreed-upon value constitutes the gross receipts or purchase price subject to tax. Coins or currency becomes articles of tangible personal property having a value greater than face value when they are exchanged for a price greater than face value. However, when a coin or other currency, in the course of circulation, is exchanged at its face value, the sale shall be subject to tax for the face value alone. *Losana Corp. v. Porterfield,* 14 Ohio St.2d 42, 236 N.E.2d 535 (1968).

EXAMPLE 1. Taxpayer operates a furniture store. The taxpayer offers to exchange furniture for silver coins at ten times the face value of any coins dated prior to January 1, 1965. Upon any exchange pursuant to the offer, the value of the coins for purposes of determining the tax on the exchange will be equivalent to the value as agreed upon by the parties without regard to the face value of the coins.

EXAMPLE 2. Taxpayer operates a hardware store. In the regular course of business, the taxpayer receives silver coins dated prior to January 1, 1965. Taxpayer has received the coins at face value for the sales price and only that value is subject to tax.

Also see Attorney General Opinion Griger to Bair, Director of Revenue, May 15, 1980, #80-5-13.

This rule is intended to implement Iowa Code section 422.42(6).

701—15.19(422,423) Trade-ins.

15.19(1) Trade-ins. When tangible personal property is traded toward the purchase price of other tangible personal property, the gross receipts shall be only that portion of the purchase price which is payable in money to the retailer if the following conditions are met:

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

b. The tangible personal property traded to a retailer is intended by the retailer to be ultimately sold at retail; or

c. The tangible personal property traded to a retailer is intended to be used by the retailer or another in the remanufacturing of a like item.

EXAMPLE 1. A owns a car valued at $5,000. A trades his used car to XY car dealer for a used car valued at $12,000. XY car dealer normally sells used cars. Use tax would be due on the $7,000 in money A paid to XY used car dealer, as both conditions *"a"* and *"b"* have been met.

EXAMPLE 2. John Doe has a pickup truck with a value of $2,000. John wants a boat so he offers to trade his $2,000 pickup to ABC boat dealer for the purchase of a boat valued at $5,000. ABC boat dealer is a new and used boat dealer. ABC boat dealer agrees to accept the $2,000 pickup and $3,000 cash in trade for the boat. In this example, the tax would be computed on $5,000. The trade-in provision would not apply because condition *"a"* has not been met. The property traded is not the type of property normally sold by ABC new and used boat dealer in the regular course of the boat dealer's business.

EXAMPLE 3. ABC Corporation trades 500 bushels of corn and $500 cash to the local cooperative elevator for the purchase of various hand tools. The local cooperative elevator normally sells grain in its regular course of business for processing into bread. The trade-in provision in this example would not apply because condition *"b"* would not be met. The grain traded toward the purchase price of the hand tools when ultimately sold by the cooperative elevator is sold for processing and not at retail.

EXAMPLE 4. Hometown Appliance store is in the business of selling stoves, refrigerators, and other various appliances in Iowa. Hometown Appliance has a refrigerator valued at $650. Customer A wishes to trade a used refrigerator toward the purchase price of the new refrigerator. Hometown Appliance agrees to accept A's used refrigerator at a value of $150 toward the purchase price of the new refrigerator. A pays Hometown Appliance $500 in money. The trade-in provision applies as both conditions *"a"* and *"b"*have been met and tax would be due on the $500.

Several months later, Hometown Appliance sells the used refrigerator it received from customer A to the local school district which is exempt from sales tax on its purchase. The trade-in provision on the original transaction is still applicable because both conditions *"a"* and *"b"* were met. The sale is "at retail," even if it is a retail sale exempt from tax.

EXAMPLE 5. ABC Auto Supply is in the business of selling various types of automobile and farm implement supplies. The normal selling price for a car generator is $80. ABC Auto Supply allows a $20 trade-in credit to any customer who wishes to trade in an unworkable generator. At the time ABC Auto Supply accepts the unusable generator it knows that the generator will not be sold at retail; however, ABC Auto Supply does know that the generator will be sold to XYZ Company which is in the business of rebuilding generators by using existing parts plus new parts. In this example the trade-in provision would apply since conditions *"a"* and *"c"* have been met.

15.19(2) All the provisions of subrule 15.19(1) apply to the trade-in of vehicles subject to registration when the trade involves retailers of vehicles.

When vehicles subject to registration are traded among persons who are not retailers of vehicles subject to registration, the conditions set forth in 15.19(1)*"a"* and *"b"* need not be met. The purchase price is only that portion of the purchase price represented by the difference between the total purchase price of the vehicle subject to registration acquired and the amount of the vehicle subject to registration traded.

This rule applies only when a vehicle is traded for tangible personal property, regardless of whether the transaction is between a retailer and a nonretailer or two nonretailers. The vehicle traded in must be owned by the person(s) trading in the vehicle. It is presumed that the name or names indicated on the title of the vehicle dictate ownership of the vehicle as set forth in Iowa Code section 321.1.

EXAMPLE 1. John Doe has an automobile with a value of $2,000. John and his neighbor Bill Jones, who has an automobile valued at $3,500, decide to trade automobiles. John pays Bill $1,500 cash. Vehicles subject to registration are subject to use tax which is payable to the county treasurer at the time of registration. In this example John would owe use tax on $1,500 since this is the amount John paid Bill and tax is only due on the cash difference. Bill would not owe any use tax on the vehicle acquired through the trade.

EXAMPLE 2. Joe has a Ford automobile with a value of $5,000. Joe and his friend Jim, who has a Chevrolet automobile also valued at $5,000, decide to trade automobiles. Joe and Jim make an even trade, automobile for automobile with no money changing hands. In this example there is no tax due on either automobile because there is no exchange of money.

15.19(3) Trade for services. The trade-in provisions found in Iowa Code sections 422.42(5)*"b"* and 423.1(8) do not apply to taxable enumerated services. When taxable enumerated services are traded, the gross receipts would be determined based on the value of the service or other consideration.

15.19(4) Three-way trade-in transactions. In a three-way transaction, the agreement provides that a lessee sell to a third-party dealer a vehicle (or other tangible personal property) which the lessee owns. The lessor then purchases another vehicle from the third-party dealer at a reduced price and leases the vehicle to the lessee. The difference between the reduced sale price and retail price of the vehicle is not allowed as a trade-in on the vehicle for use tax purposes.

EXAMPLE. "A" enters into a three-way agreement with "B," the lessor. Under the terms of the contract, "A" sells a 2000 Ford Taurus owned by "A" to "C," a used-car dealer. The retail price for the Ford Taurus is $30,000. "C" then sells the Ford Taurus to "B" for the reduced price of $25,000. "B" then leases the Ford Taurus to "A" for a period of 12 months. The $5,000 difference between the reduced sale price and the retail price of the vehicle is not allowed as a trade-in on the sale of the vehicle for use tax purposes.

This rule is intended to implement Iowa Code sections 422.42(5)*"b"* and 423.1(8). See also *Reynolds Motor Co. et al v. Iowa Dep't. of Revenue,* Equity 72050, Dist. Ct. of Scott Cty., Iowa, August 28, 1987.

701—15.20(422,423) Corporate mergers which do not involve taxable sales of tangible personal property or services. If title to or possession of tangible personal property or ownership of services is transferred from one corporation to another pursuant to a statutory merger, the transfer is not a "sale" subject to tax if all of the following circumstances exist: (1) the merger is pursuant to statute (for example, Iowa Code section 490.1106); (2) by the terms of that statute, the title or possession of property or services transferred passes from a merging corporation to a surviving corporation and not for any consideration; and (3) the merging corporation is extinguished and dissolved the moment the merger occurs and, as a result of this dissolution, cannot receive any benefit from the merger. Transactions which are not of the type described above may involve taxable sales. See the following court cases relating to this area: *Nachazel v. Mira Co. Mfg.,* 466 N.W.2d 248 (Iowa 1991); *D. Canale & Co. v. Celauro,* 765 S.W.2d 736 (Tenn 1989); and *Commissioner of Revenue v. SCA Disposal Services,* 421 N.E.2d 766 (Mass 1981).

EXAMPLE A: Nonaffiliated Corporations A and C enter into a voluntary merger agreement governed by Iowa Code section 490.1106. A and C are separate and independent, one from the other, and neither is a subsidiary of another corporation. No officer of the one is an officer of the other. A and C voluntarily negotiate an arms-length merger agreement which results in the transfer of A's assets to C and the dissolution of A. In return, A's stockholders receive stock in C. A's transfer of tangible personal property to merged company C is not subject to sales or use tax.

EXAMPLE B: Corporations B, D, and E are independent entities. They enter into a merger agreement governed by Iowa Code section 490.1106 and agree to merge into one surviving corporation which will (after the dissolution of B and D) be E. They agree that the shares of merging corporations will be converted into shares of E on an equal basis. The transfers of property by the corporations which are parties to the merger are not sales subject to Iowa tax.

EXAMPLE C: Corporation F receives all of Corporation G's outstanding shares from G's sole stockholder. In return, G's sole stockholder receives stock from F. Corporation G continues to exist after the transaction as a subsidiary of Corporation F. This particular transaction involves a trade or barter of the stock shares of F and G. There is a barter of the stocks and thus a "sale" as that term is understood for the purposes of Iowa sales tax law. However, because the sale involves only intangible property (the stock shares), that sale is not taxable. The stock exchange transaction would not prevent taxation of subsequent transfers of tangible personal property or services between F and G.

EXAMPLE D: Corporation H buys all the assets of Corporation I which include machinery, equipment, finished goods, and raw materials. Corporation H pays cash for these assets. This transaction does involve the sale of tangible personal property and may be subject to Iowa sales tax. However, see 701—subrule 18.28(2) concerning a casual sale exemption applicable to the liquidation of a business.

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CHAPTER 16
TAXABLE SALES
[Prior to 12/17/86, Revenue Department[730]]

701—16.1(422) Tax imposed. The Iowa retail sales tax is imposed for periods prior to July 1, 1992, at the rate of 4 percent and for periods on or after July 1, 1992, at the rate of 5 percent of the gross receipts from the sale at retail of tangible personal property and certain enumerated services. However, see rule 701—14.3(422,423) for transition provisions to determine whether the 4 or 5 percent rate applies.

The remaining rules under this chapter deal with certain specific attributes of the Iowa retail sales tax, but such rules are by no means exclusive in explaining what are taxable sales and are not exclusive in explaining which transactions constitute taxable sales. There are other transactions which constitute taxable sales under the law and which are not specifically dealt with in these rules.

This rule is intended to implement Iowa Code section 422.43.

701—16.2(422) Used or secondhand tangible personal property. The sale of used or secondhand tangible personal property in the form of goods, wares, or merchandise shall be taxable in the same manner as new property. This condition eliminates any consideration for secondhand merchandise to be treated differently than new merchandise when sold at retail for sales tax purposes.

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

701—16.3(422,423) Tangible personal property used or consumed by the manufacturer thereof. When a person who is primarily engaged in the manufacture of building materials, supplies, or equipment for sale and not for the person's own use or consumption, considering the totality of the business, from time to time uses or consumes the building materials, supplies, or equipment for construction purposes, the person is deemed to be making retail sales to one's self and subject to tax on the basis of the fabricated cost of the items so used or consumed for construction purposes. If building materials, supplies, or equipment are used by a manufacturer in the performance of a construction contract, a "sale" occurs only if the materials, supplies, or equipment are used in the performance of a construction contract in Iowa. For purposes of this rule, the term "fabricated cost" means and includes the cost of all materials as well as the cost of labor, power, transportation to the plant, and other plant expenses but not installation on the job site. *Associated General Contractors of Iowa v. State Tax Commission,* 255 Iowa 673, 123 N.W.2d 922 (1963). Also see rule 701—19.4(422,423) relating to contractors and rule 701—19.5(422) relating to materials, supplies, and equipment used in construction contracts within and outside of Iowa.

This rule is intended to implement Iowa Code section 422.42(10).

701—16.4(422,423) Patterns, dies, jigs, tools, and manufacturing or printing aids.

16.4(1) *Retail sales.* Prior to July 1, 1997, a person engaged in the business of making and selling patterns, dies, jigs, tools and manufacturing or printing aids to be used by other persons in the manufacture of tangible personal property shall be deemed as selling such patterns, dies, jigs, tools and manufacturing or printing aids at retail. If such items are sold by a vendor in Iowa, the gross receipts from these sales shall be subject to sales tax; and, if such items are purchased from a vendor outside Iowa, the purchaser shall be subject to use tax. See 701—18.58 (422,423) for exemption for this type of equipment on and after July 1, 1997.

Design charges that are not physically incorporated into a finished product are exempt from tax if separately contracted. If no written contract exists, the design charge must be separately itemized on the invoice to be exempt from tax.

When a manufacturer purchases or fabricates from raw materials purchased, dies, patterns, jigs, tools, and manufacturing or printing aids for the account of customers who acquire title to the property upon delivery thereof or upon the completion of the fabrication thereof by the manufacturer, the manufacturer shall be regarded as purchasing the property either as an agent for, or resale to, customers. Tax shall apply to either the manufacturer as an agent of the customer or to the sale by the manufacturer to the customer.

In determining whether the manufacturer purchases the property on behalf of, or for resale to, a customer, the terms of the contract with the customer, the custom of usage of the trade and any other pertinent factors shall be considered. For example, if the customer issues a purchase order for patterns, dies, jigs, tools, and manufacturing or printing aids, or on the purchase order for the goods, itemizes or otherwise specifies the particular patterns, dies, jigs, tools, and manufacturing or printing aids, which will be required by the manufacturer to manufacture the goods desired by the customer and the manufacturer obtains the item pursuant to the customer's specific order, billing, itemizing or otherwise identifying it to the customer separately from the billing for the article manufactured therefrom, and either delivers it to the customer or holds it as bailee for the customer, it will be presumed that the manufacturer acquired the property on behalf of the customer or for immediate resale to the customer.

16.4(2) *Revisions and repairs.* When a person takes existing patterns, dies, jigs, tools and manufacturing or printing aids and revises them by changing or modifying such items in such a way as to create a new pattern, die, jig, tool, and manufacturing or printing aid, such person shall not be considered as making a retail sale since title never passes from the owner of the existing patterns, dies, jigs, tools and manufacturing or printing aids, and such person shall be considered to be performing a service. This service and any repair of any pattern, die, jig, tool and manufacturing or printing aid are not services enumerated in Iowa Code section 422.43. Any additional materials used and transferred to the owner in addition to the existing patterns, dies, jigs, tools and manufacturing or printing aids, in the revision or repair thereof would be taxable. *Chicago, B. & Q. R. Co. v. Iowa State Tax Commission,* 295 Iowa 178, 142 N.W.2d 407 (1966).

However, any service enumerated in Iowa Code section 422.43, which is performed in connection with this revision or repair would be subject to tax; such as when a die owner hires a welding firm to weld a broken die part on a die. The charges for the labor and materials used in connection with this service would be subject to the tax.

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

701—16.5(422,423) Explosives used in mines, quarries and elsewhere. A person engaged in the business of selling explosives to miners, quarries or others shall be subject to sales tax on the gross receipts from the sale of such property at retail in Iowa. The purchaser shall be liable for use tax upon all purchases for use in Iowa not subject to sales tax. *Linwood Stone Products Company v. State Department of Revenue,* Iowa, 175 N.W.2d 393 (1970).

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

701—16.6(422,423) Electrotypes, types, zinc etchings, halftones, stereotypes, color process plates and wood mounts. Electrotypes, types, zinc etchings, halftones, stereotypes, color process plates, wood mounts and art productions shall be subject to tax when sold to users or consumers. (See rule 701—18.33(422,423) for sales to printers.) The mentioned articles do not become an integral or component part of merchandise intended to be sold ultimately at retail. *Long v. Roberts & Son,* 234 Ala. 570 176 So. 213 (1937); *People ex. rel. Walker Engraving Corporation v. Groves,* 268 N.Y. 648, 193 N.E. 539 (1935).

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 423.1(1), and 423.2.

701—16.7 Rescinded, effective 7/1/78.

701—16.8(422,423) Wholesalers and jobbers selling at retail. Sales made by a wholesaler or jobber to a purchaser for use or consumption by the purchaser or in the purchaser's business and not for resale are considered retail sales and subject to tax, even though sold at wholesale prices or in wholesale quantities.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 423.1(1), 423.1(10), and 423.2.

701—16.9(422,423) Materials and supplies sold to retail stores. Receipts from the sale of materials and supplies to retail stores for their use and not for resale shall be subject to tax. The retail store is the final buyer and ultimate consumer of such items as fuel, cash registers, adding machines, typewriters,

stationery, display fixtures and numerous other commodities which are not sold by the store to its customers.

This rule is intended to implement Iowa Code sections 422.42, 422.43, 423.1(1), and 423.2.

701—16.10(422,423) Sales to certain corporations organized under federal statutes. The sale of tangible personal property or taxable services at retail to the following corporations are sales for final use or consumption to which tax shall apply:

1. Federal savings and loan associations.
2. Federal savings and trust companies.
3. National banks.
4. Other organizations of like character.

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

701—16.11(422,423) Paper plates, paper cups, paper dishes, paper napkins, paper, wooden or plastic spoons and forks and straws. When paper, wooden or plastic cups, plates, dishes, napkins, spoons and forks are sold with tangible personal property and expended by such use, the sale of such properties to retailers shall be considered sales for resale. The gross receipts from the sale of such items by retailers to consumers or users shall be subject to tax.

When these articles are sold in connection with service or for free distribution by retailers apart from a retail sale, the transaction shall be deemed to be a retail sale to the retailer and shall be taxable.

Sales of reusable placemats to retailers who sell meals shall be subject to tax.

EXAMPLE 1. A retailer purchases napkins, disposable forks and knives for the retailer's restaurant. The retailer provides these items free of charge, apart from the retail sale of food at the retailer's restaurant. Sale of these items to the retailer is a retail sale and is subject to tax.

EXAMPLE 2. A retailer purchases napkins, disposable knives and forks for the retailer's restaurant. The retailer sells these items with tangible personal property to the retailer's customers. The sale of these items to the retailer is considered a sale for resale and is not subject to Iowa sales tax at the time of purchase.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 423.1(1), and 423.2.

701—16.12(422) Tangible personal property purchased for resale but incidentally consumed by the purchaser. A retailer engaged in the business of selling tangible personal property who takes merchandise from stock for personal use, consumption, or gifts shall report these items on the sales tax return and remit tax on the purchase cost of the items.

This rule does not authorize purchase for resale of items intended to be used by the retailer.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, and 422.51.

701—16.13(422) Property furnished without charge by employers to employees. When an employer furnishes tangible personal property (including meals) to employees without charge or uses merchandise for gifts or consumption, the cost to the employer of the tangible personal property or merchandise shall be subject to tax and included on the employer's return if the employer has not previously paid tax to a retailer. However, the food purchased by the employer for meals prepared for employees is not subject to tax. See In the Matter of the Petition of Cedar Rapids Country Club for Declaratory Ruling, (Rev. Dkt. No. 91-30-6-0541, 12-23-91).

This rule is intended to implement Iowa Code sections 422.42, 422.43, and 422.51.

701—16.14(422) Sales in interstate commerce—goods delivered into this state. When parties contract for the sale of tangible personal property in interstate commerce and the property is delivered to users or consumers in Iowa and the seller is engaged in the business of selling tangible personal property in Iowa, the transaction shall be subject to sales tax. The tax shall apply, even though the purchaser's order may specify that the goods are to be manufactured or procured outside Iowa and shipped directly from the point of origin to the purchaser. The seller shall be required to collect and remit sales tax on all such transactions.

If the above conditions are met, and the property is delivered to the purchaser in Iowa, it shall be immaterial if the contract of sale is closed by acceptance outside Iowa, if the contract is made before the property is brought into Iowa or if any other aspect of the sale occurs outside this state. *Harold D. Sturtz v. Iowa Department of Revenue,* 373 N.W.2d 131 (Iowa 1985).

16.14(1) *Delivery in state.* Delivery is held to have taken place in Iowa when physical possession of the tangible personal property is actually transferred to the consumer or user or their agents, other than a carrier, within the state. *Dodgen Industries v. Iowa State Tax Commission,* 160 N.W.2d 289 (Iowa 1968). For examples of delivery which do not involve physical transfer of possession to the user or consumer, see 701—subrules 14.3(2) and 14.3(3).

16.14(2) Rescinded IAB 4/15/92, effective 5/20/92.

This rule is intended to implement Iowa Code sections 422.42, 422.43, and 422.45(1).

701—16.15(422) Owners or operators of buildings. Owners or operators of buildings who purchase items to be used by them in maintaining the building are the users or consumers and shall pay sales tax to their suppliers.

16.15(1) When owners or operators of buildings remeter and bill their tenants for electric current, gas, or any other taxable service consumed by the tenants, such owners or operators shall be considered to be purchasing the electric current, gas, or other taxable service for resale. These owners or operators shall hold permits and shall be liable for the tax upon the gross receipts from the sale of such service. When the building owners or operators purchase all of the electric current, gas, or other services for resale and consume a portion in the operation of the building, they shall be liable for tax on that portion consumed, based upon the cost of the electric current or gas purchased for resale.

16.15(2) When the management of a building sells heat to other buildings or other persons and charges for such service as a sale of heat, such transactions are considered sales at retail and shall be subject to tax.

16.15(3) When heat is furnished to tenants as a service to them, incidental to the renting of the space, there shall be no tax. When heat is sold separately and billed to the tenants separately, such service shall be taxable.

16.15(4) When a building manager makes sales of tangible personal property or taxable services at retail, the manager shall be required to procure a permit and collect and remit tax.

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

701—16.16(422,423) Tangible personal property made to order. When a retailer contracts to fabricate items of tangible personal property from materials available in stock or through placing orders for materials which have been selected by customers, the total receipts from the sale of such fabricated articles shall be included in the taxable receipts. The retailer shall not deduct fabrication or production charges, even though such charges are separately billed. Hellerstein, *The Scope of the Taxable Sale Under Sales and Use Tax Acts: Sales as Distinguished From Services,* 11 Tax L. Rev. 262, 269 (1956).

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

701—16.17(422,423) Blacksmith and machine shops. When a blacksmith or machine shop operator fabricates finished articles from raw materials and sells such articles at retail, tax shall apply on the total charge which includes the fabrication labor.

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

701—16.18(422,423) Sales of signs at retail. A person engaged in selling illuminated signs, bulletins, or other stationary signs (whether manufactured by that person or by others) to users or consumers is selling tangible personal property at retail. The gross receipts from the sales shall be taxable, even when the purchase price of the sign includes a charge for maintenance or repair service, in addition to the charge for the sign.

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

701—16.19(422,423) Products sold by cooperatives to members or patrons. Sales by cooperatives to members or patrons shall be subject to tax. The gross receipts from the sale of tangible personal property to stockholders or members of cooperative creameries or creamery associations shall be included in the receipts on which tax is computed. See 1942 O.A.G. 101.

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

701—16.20(422,423) Municipal utilities, investor-owned utilities, or municipal or rural electrification cooperatives or associations. Municipal utilities, investor-owned utilities, or municipal or rural electrification cooperatives or associations shall be required to collect and remit tax from the sale of electric energy to consumers. Such municipal utilities, investor-owned utilities, or municipal or rural electrification cooperatives or associations may execute resale exemption certificates to the companies from whom they purchase electric energy and may obtain resale exemption certificates from consumers to whom they sell electric energy for processing or resale.

Municipal utilities, investor-owned utilities, or municipal or rural electrification cooperatives or associations shall be required to collect and remit tax on all sales of tangible personal property to users and consumers and pay tax on the purchase of all tangible personal property which they do not resell, except as provided herein. They need not pay tax on electricity which they generate and subsequently use and consume in the operation of their facilities. *Iowa Public Service Company v. Iowa State Department of Revenue,* D.Ct. of Woodbury Cty., Iowa, No. 90018C Law (1984). Tax shall not apply to electricity consumed in processing tangible personal property intended to be sold ultimately at retail.

Electricity loss through line loss or electricity provided to municipalities or other governmental units which derive disbursable funds from appropriations or allotments of funds raised by the levying and collection of taxes and used for public purpose shall not be subject to tax.

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

701—16.21(422,423) Sale of pets. A retailer selling pets shall procure a permit and report tax on the gross receipts from the sale of such pets.

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

701—16.22(422,423) Sales on layaway. The gross receipts from sales on layaway are subject to tax. A layaway sale involves two separate and distinct contracts. Under the first contract, the customer and the retailer enter into an agreement to give the customer an option to purchase a certain item of tangible personal property. Under the second contract, the sale of property takes place. During the period of the option the item is placed aside "on layaway" and is not available for sale to the general public. This option to purchase is exercised by the customer's making one or more "layaway payments." The customer exercises the option to buy by completing the layaway payments. The last layaway payment is also the tendered payment under the separate contract for sale of the property. The contract for sale is complete when the seller delivers the property to the buyer. See *Holland v. Brown,* 15 Utah 2d 422, 394 P.2d 77 (1964) and *Sturtz v. Iowa Department of Revenue,* 373 N.W.2d 131 (Iowa 1985). Tax must be reported during the period (e.g., the quarter or month) in which delivery under the contract for sale portion of the layaway occurs. This will nearly always be the reporting period in which physical transfer of possession passes from the retailer to the buyer.

A sale on layaway should not be confused with a "conditional sale." The differences are these: (1) in a conditional sale physical transfer of property occurs before, rather than after, the buyer makes all periodic payments necessary to purchase the property; (2) in a conditional sale physical possession of and title to the property pass to the buyer at different times. First physical possession passes; then after all periodic payments are made title (ownership) passes to the buyer. In a layaway sale both possession and title pass at the same time after all payments are made; (3) the conditional sale is a much more common commercial arrangement than the sale on layaway.

This rule is intended to implement Iowa Code section 422.42(2).

701—16.23(422) Meal tickets, coupon books, and merchandise cards. When meal tickets, coupon books, or merchandise cards are sold by persons engaged exclusively in selling taxable commodities or services, tax shall be levied at the time such items are redeemed by the customer. Tax shall not be added at the time of actual purchase of the meal ticket, coupon book, or merchandise card.

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

701—16.24(422,423) Truckers engaged in retail business. Truckers or haulers engaged in the sale of tangible personal property to ultimate users or consumers shall be deemed as making taxable sales.

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

701—16.25(422,423) Foreign truckers selling at retail in Iowa. Foreign truckers or persons engaged in the sale of tangible personal property at retail in Iowa by means of hauling said property into the state shall be required to collect and remit tax on a nonpermit basis. To ensure the remission of tax on Iowa sales, the department has the statutory authority to require a bond deposit from sellers classified in this rule. This right shall be exercised when necessary.

This rule is intended to implement Iowa Code sections 422.43, 422.52, 422.53(7), 423.2, and 423.9.

701—16.26(422) Admissions to amusements, athletic events, commercial amusement enterprises, fairs, and games.

16.26(1) *Taxable admissions.* The gross receipts from amusements of every kind and character and from games of every kind and character shall be taxable, unless exempt under rule 16.26(422), 16.39(422) or 701—17.1(422).

a. Taxable amusement shall include but not be limited to the following:

(1) Fortune telling, fortune tellers, and psychics.

(2) Concessions at a fair, carnival, or like place when the charge is made or a voluntary contribution taken by the person operating the concession.

(3) Games of skill, games of chance, raffles, and bingo.

(4) Activities operated by private entities.

(5) Admissions to a fair not operated by a county or city.

(6) Athletic events occurring in Iowa sponsored by educational institutions except when sponsored by elementary and secondary educational institutions.

b. Tax shall apply to both legal and illegal amusements. The collection of tax or the issuance of a permit shall not be construed to condone or legalize any games of skill or chance or slot-operated device prohibited by law.

c. Gross receipts shall include all money taken in by the operator of any amusement, game, or device in the state of Iowa.

16.26(2) *Nontaxable amusements.* The following is a nonexclusive list of amusements, the gross receipts of which are exempt from sales tax:

a. Amusements, fairs, and athletic events of elementary and secondary educational institutions.

b. Certain fees paid to a city or county for participating in an athletic sport. See rule 701—18.39(422,423).

c. Admissions to a fair operated by a county or a city.

d. For periods beginning on or after July 1, 1996, the gross receipts from sales or services rendered, furnished, or performed by the state fair organized under Iowa Code chapter 173 or a county, district, or fair society organized under Iowa Code chapter 174. This exemption does not apply to individuals, entities, or others that sell tangible personal property or provide taxable enumerated services at the state, county, district fair, or fair societies organized under Iowa Code chapters 173 and 174.

EXAMPLE 1. The state fair organization sells posters in honor of the state of Iowa's sesquicentennial during the Iowa state fair and other events. The gross receipts from the sales of these posters are exempt from tax as a sale by a fair organized under Iowa Code chapter 173.

EXAMPLE 2. XYZ vendor sells children's toys and other items of tangible personal property at a booth on the fairgrounds during the Iowa state fair. The gross receipts from sales by XYZ vendor are

not exempt from Iowa sales tax under this rule. XYZ vendor is a private entity and not a state, county, district, city, or fair society organized under Iowa Code chapters 173 and 174.

EXAMPLE 3. The Black Hawk county fair society rents tables and chairs to XYZ organization for an event to be held by XYZ. The gross receipts from the rental of the tables and chairs are exempt from sales tax since the county fair is organized pursuant to Iowa Code chapter 174.

16.26(3) *Fees for participation in games or other amusements.*

Beginning July 1, 1993, an entry fee at a place of amusement, fair, or athletic event is not subject to tax when the sales of tickets or admission charges for observing the activity are taxable. If there is no admission but only an entry fee, the entry fee is subject to sales tax whether or not the entry fee is used for prizes. A fee shall mean and include, but not be limited to, entry fees, registration fees, or other charges made by the operator or sponsor of a game or other form of amusement for the right to participate in such game or amusement. Game or other form of amusement shall mean and include, but not be limited to, such events as golf tournaments, bowling tournaments, car races, motorcycle races, bridge tournaments, rodeos, animal shows, fishing contests, balloon races, and trap shoots.

Prior to July 1, 1993, fees which are specifically designated as prize money, whether or not paid to the operator or sponsor of the game or other form of amusement, and which are in fact returned to the participants in the form of cash for merchandise prizes, are not subject to tax if the amount or percentage designated as prize money is separately stated to the participant at the time the participation fee is established and if sales or use tax is paid on the merchandise prizes to be distributed to the participants. If the amount designated as prize money is not separately stated to the participant, the tax shall apply to the total fee, even though some of the fee may be used for prizes. The tax applies whether the fee is to cover a single event or numerous events.

Educational, religious, and charitable organizations may be exempt from the tax on the receipts from the fees charged for participation in any game or other form of amusement if exempt pursuant to Iowa Code section 422.45(3) and rule 701—17.1(422).

This rule is intended to implement Iowa Code sections 422.42, 422.43, 422.45(3) and Iowa Code section 422.45 as amended by 1996 Iowa Acts, chapter 1124.

701—16.27(422) Amusements. Rescinded IAB 11/10/93, effective 12/15/93.

701—16.28(422) Fees for participation in games or other amusements. Rescinded IAB 11/10/93, effective 12/15/93.

701—16.29(422) Rental of personal property in connection with the operation of amusements. Gross receipts from equipment rental of personal property in connection with the operation of amusements shall be taxable. Such rentals shall include all tangible personal property or equipment used by patrons in connection with the operation of commercial amusements, notwithstanding the fact that the rental of such personal property may be billed separately. See 701—26.18(422).

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

701—16.30(422) Commercial amusement enterprises—companies or persons which contract to furnish show for fixed fee. Sales by commercial amusement enterprises occurring on or after May 31, 1984, shall not be subject to tax.

This rule is intended to implement Iowa Code section 422.43.

701—16.31(422) Admissions to state, county, district and local fairs. Rescinded IAB 11/10/93, effective 12/15/93.

701—16.32(422) River steamboats. River steamboats carrying passengers for pleasure rides on any river within the state or which forms a boundary line between Iowa and another state shall be an amusement enterprise. Gross receipts from the sale of such tickets sold in Iowa shall be taxable. For

an exception to this rule and an exemption applicable to tickets for admission to excursion gambling boats, see rule 701—17.25 (422,423).

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

701—16.33(422) Pawnbrokers. Pawnbrokers are primarily engaged in the business of lending money for and accepting as security tangible personal property from the owner or pledger.

In case the pledger does not redeem the property pledged or pawned, such property is forfeited to the pawnbroker, to whom the title passes.

When pawnbrokers thereafter sell such articles at retail, they are making sales and shall collect and remit tax.

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

701—16.34(422,423) Druggists and pharmacists. Persons licensed to practice pharmacy in Iowa and registered prescription druggists in Iowa engaged in the business of selling drugs and medicines shall not be liable for tax on the applicable exemptions prescribed under 701—Chapter 20.

Unless otherwise exempt from tax, the purchase of tangible personal property for individual use or consumption by licensed pharmacists and registered prescription druggists shall be subject to tax. Furthermore, such persons shall hold a retail sales tax permit and collect and report all tax due from consumers and users in all transactions involving taxable retail sales.

This rule is intended to implement Iowa Code sections 422.42, 422.43, 422.45(13), 423.1, 423.2, and 423.4(4).

701—16.35(422,423) Memorial stones. Persons engaged in the business of selling memorial stones are selling tangible personal property, the gross receipts from which shall be subject to tax. When the seller of a memorial stone agrees to erect a stone upon a foundation, the total gross receipts from such sale shall be taxable.

Any designs, lettering or engraving performed on a memorial stone or monument is also subject to the tax. See rule 701—26.17(422,423) and In Re, *Des Moines-Winterset Monuments, Inc.,* Docket No. 79-228-6A-DR, March 13, 1980.

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

701—16.36(422) Communication services furnished by hotel to its guests. As a common practice, hotels in the state of Iowa purchase telephone communication service from telephone companies and furnish said services to the guests of the hotel. The hotel makes a charge for this communication service to its guests in an amount which exceeds the cost of such service to it from the telephone company. Tax shall apply to the entire charges which the hotel makes to its guests for such communication service, regardless of whether the guest's calls are local or long-distance within the state.

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

701—16.37(422) Private clubs. Private clubs, such as country clubs, athletic clubs, fraternal and other similar social organizations, are retailers of tangible personal property sold by them, even though the sales are made only to members. These organizations shall procure a permit and report and pay tax on the gross receipts of all sales by such clubs.

When clubs operate amusements or amusement devices or coin-operated machines, the gross receipts therefrom shall be included with the gross receipts from other taxable sales on which tax is computed.

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

701—16.38(422,423) Aircraft sales. Rescinded IAB 10/13/93, effective 11/17/93.

701—16.39(422) Athletic events. The sale of tickets or admissions to athletic events occurring in the state of Iowa sponsored by educational institutions without regard to the use of the proceeds from such

sales shall be subject to tax, except when sponsored by elementary and secondary educational institutions as set forth in Iowa Code section 422.43.

This rule is intended to implement Iowa Code section 422.43.

701—16.40(422,423) Iowa dental laboratories. Iowa dental laboratories are engaged in selling tangible personal property to Iowa dentists. Such laboratories shall hold a retail sales tax permit and collect and report all tax due from dentists in all transactions involving taxable retail sales.

Iowa dental laboratories shall not be subject to tax on those purchases of tangible personal property which (1) form a component or integral part of new work or repair work being furnished to Iowa dentists or other dentists or (2) would be exempt if purchased directly by the dentist's patient.

Iowa dental laboratories are deemed to be the final user or consumer of all tangible personal property, including tools, office supplies, equipment and any other tangible personal property not otherwise exempt. Sales tax shall be remitted to its Iowa supplier when purchasing in this state, and use tax shall be remitted directly to the department when such items are purchased from out-of-state suppliers, unless the out-of-state supplier is registered with the department and authorized to collect use tax for the state, in which case the use tax shall be paid to the registered supplier.

This rule is intended to implement Iowa Code sections 422.42, 422.43, 422.45(15), 423.1, and 423.2.

701—16.41(422,423) Dental supply houses. Dental supply houses are engaged in selling tangible personal property to dentists and dental laboratories. Such dental supply houses shall collect and report all tax due from purchasers in all transactions involving taxable retail sales. This shall not include sales of tangible personal property which (1) will form a component or integral part of new work or repair work being furnished to Iowa dentists or other dentists or (2) would be exempt if sold directly to an individual.

This rule is intended to implement Iowa Code sections 422.42, 422.43, 422.45(15), 423.1, and 423.2.

701—16.42(422) News distributors and magazine distributors. News distributors and magazine distributors engaged in intrastate sales of magazines and periodicals in Iowa to vendors who are engaged in part-time distribution of such magazines are deemed to be making sales at retail. The gross receipts from such sales shall be subject to sales tax.

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

701—16.43(422,423) Magazine subscriptions by independent dealers. The gross receipts from the sale of subscription magazines or periodicals derived by independent distributors or dealers in the state of Iowa who secure such subscriptions as independent dealers or distributors shall be subject to tax.

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

701—16.44(422,423) Sales by finance companies. A finance company who repossesses or acquires tangible personal property in connection with its finance business and sells tangible personal property at retail in Iowa shall be required to hold a permit and remit the current rate of tax on the gross receipts from such sales at retail in Iowa. *S & M Finance Company Fort Dodge v. Iowa State Tax Commission,* 162 N.W.2d 505 (Iowa 1968).

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

701—16.45(422,423) Sale of baling wire and baling twine. Prior to July 1, 1996, the sale of baling wire and baling twine to farmers may be taxable or exempt from tax, depending upon the use which the farmer will make of the baling wire or twine. If a farmer purchases baling wire or twine for use in baling hay or straw which will be used or consumed in that farmer's own farming operation, the purchase of the baling wire or twine is taxable. If a farmer purchases baling wire or twine for use in baling hay or straw for sale to other persons, the farmer's purchase of the wire or twine is exempt from tax. Purchase

of wire or twine by commercial or custom balers employed to bale hay or straw owned by other persons is taxable. For sales on or after July 1, 1996, see 701—subrule 18.48(4).

This rule is intended to implement Iowa Code section 422.45(19) and Iowa Code section 422.45 as amended by 1996 Iowa Acts, chapter 1145.

701—16.46(422,423) Snowmobiles and motorboats. Snowmobiles and motorboats shall be subject to tax when purchased and shall not be classified as vehicles subject to registration.

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

701—16.47(422) Conditional sales contracts. Iowa Code section 422.42(2) defines sales to include "conditional sales." A conditional sale is a sale in which the vendee receives the right to the use of the goods which are the subject matter of the sale, but the transfer of title to the vendee is conditional on the performance of some condition by the vendee, usually the full payment of the purchase price.

Conditional sales in most cases are evidenced by the facts supporting the nature of the vendor's business, intent of the parties, and the facts supporting the control over the tangible personal property by the vendee. A conditional sales contract would exist where: the vendee/lessee has total control over the property, is responsible for all losses or damages; the transfer of the property is complete except to title which passes upon the condition of full payment; and where such full payment is performed under nearly all the vendor's "lease" arguments, except in cases of default; and, the vendor has no intent of retaining control over the property except for purposes of selling or financing it for sale. In determining whether an agreement constitutes a conditional sale or a true lease, substance shall prevail over form, and the terminology of the written agreement will be considered only to the extent that it accurately represents the true relationship of the parties.

When a conditional sale exists, sales tax is due on the full contract price at the time delivery of the property which is the subject of the contract is made. No further tax is due on the periodic payments. Interest and finance charges shall not be considered part of the selling price if they are separately stated and reasonable in amount and are, therefore, not subject to tax. *State ex rel Turner v. Younker Bros., Inc* 210 N.W.2d 550, 562 (Iowa 1973). See rule 701—15.1(422).

This rule is intended to implement Iowa Code sections 422.42(2), 422.42(3), and 422.43.

701—16.48(422,423) Carpeting and other floor coverings. The sale of carpeting and other floor coverings to any person constitutes a sale at retail of tangible personal property and is subject to sales or use tax, unless purchased for resale or otherwise exempt from tax.

Floor coverings which are shaped to fit a particular room or area and which are attached to the supporting floor with cement, tacks, or by some other method making a permanent attachment with the building or structure are considered to be building materials and shall be taxable in the same manner as building materials which are used or consumed in the performance of a construction contract. See rule 701—19.2(422,423) and 701—subrule 19.3(3) for tax treatment. On and after July 1, 1992, the sale of carpeting is not to be treated as the sale of a "building material." Prior to July 1, 1992, carpeting was treated the same as floor coverings. The sale of other types of floor covering continues to be the sale of a building material. See the following paragraph for sales and use tax treatment of carpeting on and after July 1, 1992. The gross receipts for the sale of rugs, mats, linoleum, and other types of floor coverings which are not attached but which are simply laid on finished floors, are not considered building materials and are subject to tax, unless purchased for resale or otherwise exempt from tax.

On and after July 1, 1992, the sale of "carpeting" to owners, contractors, subcontractors or builders is not the sale of a building material, but the sale of ordinary tangible personal property, which can be purchased for resale by owners, contractors, subcontractors or builders. "Carpeting" is any floor covering made of fabric, usually wool or synthetic fibers. For purposes of this rule, "carpeting" also includes any pads, tack strips, adhesive, and other materials other than subflooring necessary for installation of the carpeting. On and after July 1, 1992, sellers of carpeting should continue to charge purchasers sales tax unless the carpeting is purchased for resale or some other exempt purpose, in which case the purchaser must provide the seller with an exemption certificate upon demand.

On and after July 1, 1992, sales of carpeting, with installation, are taxable in the following manner:

1. If separate contracts exist for the sale of the carpeting and for the installation, only the gross receipts from the sale of the carpeting are subject to tax.

2. If the selling price of the carpeting and the installation charge are stated as one charge or lump sum, the entire charge is subject to sales tax.

3. If the invoice itemizes the installation charge separately from the selling price of the carpet, only the selling price of the carpet is subject to sales tax if the installer and the purchaser of the carpet intend that a sale of the carpet shall occur. See 701—subrule 18.31(1) for more information.

In the following examples assume that contractor A purchases carpeting from supplier B for installation in customer C's home. Whether or not A will purchase the carpeting from B for A's own consumption (and thus, A will pay the tax to B) or A will purchase the property from B for resale to C (and thus, C will pay the tax to A) depends upon any contracts existing between A, the contractor, and C, the customer.

EXAMPLE A: A contracts with C to install carpeting in C's home. Separate contracts exist between A and C for the sale of the carpeting and for its installation. Under these circumstances, A purchases the carpeting from B for resale to C. No tax is due upon the transaction between A and B; tax is due upon A's resale of the carpet to C, but not upon A's charges for carpet installation, a nontaxable service.

EXAMPLE B: A charges C one lump sum for the carpeting and installation. In this case, A collects sales tax from C on the entire lump sum. The lump sum is treated, for sales tax purposes, as the gross receipts from the sale of tangible personal property; so A purchases the carpet from B for resale and without tax.

EXAMPLE C: A and C contract for the sale of the carpet separate from its installation. A sends C one invoice for the installation and sale of the carpet with the installation charge listed on the invoice separate from the selling price of the carpet. Under these circumstances, only the selling price of the carpet listed on the invoice is subject to sales tax and A purchases the carpet from B for resale and thus, without obligation to pay sales tax to B. See 701—subrule 18.31(1) for more information.

This rule is intended to implement Iowa Code sections 422.42(9) and 423.1.

701—16.49(422,423) Bowling. The rental of automatic pinsetters by bowling alley operators is subject to the imposition of sales or use tax as they are not resold to patrons. Therefore, the operator of the alley is considered the consumer of the pinsetter rental.

The rental of bowling shoes is subject to the imposition of sales or use tax as equipment rental.

The sales of bowling score sheets to operators of bowling establishments are subject to the imposition of sales or use tax as the operators are the consumers of such score sheets.

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

701—16.50(422,423) Various special problems relating to public utilities. The amount of any charge, commonly called a "late payment charge," imposed by a public utility on its customers, shall not be subject to tax if the charge is in addition to any charge for the utility's sale of its commodity or service and is imposed solely for the privilege of deferring payment of the purchase price of the commodity or service and furthermore is separately stated and reasonable in amount.

The date of the billing of charges for a public utility's sales shall be used to determine the period in which the utility shall remit tax upon the amount charged. The utility shall remit tax upon the gross receipts of any bill during the period which includes the billing date. Thus, if the date of a billing is March 31 and the due date for payment of the bill without penalty is April 20, tax upon the gross receipts contained in the bill shall be included in the return for the first quarter of the year. The same principle shall be used to determine when tax will be included in payment of a deposit.

In general, the amount of any "franchise fee" which a public utility pays to a city for the privilege of operating and which is directly or indirectly passed on to the utility's customers shall be included in gross receipts subject to tax. This will be true even if the amount of the franchise fee is computed as a percentage of other gross receipts subject to tax and is separately stated and separately charged to the immediate consumer of the commodity or service. However, if, in the future, it becomes lawful for a city

to impose a sales or use tax and such tax is imposed upon the customers of public utilities in the guise of a franchise fee, the amount of this city excise tax shall not be subject to Iowa tax if the tax imposed by the city is separately stated and separately billed. See *Chartair, Inc. v. State Tax Commission,* 411 N.Y.2d 41, 44 (N.Y. App. Div. 1978), *Ferrara v. Director, Division of Taxation,* 317 A.2d 80, 84-85 (N.J. Super. Ct. App. Div. 1974) and 730—subrule 15.12(2).

This rule is intended to implement Iowa Code sections 422.42(6), 422.43, 422.45, 423.1(3), and 423.2.

701—16.51(422,423) Sales of services treated as sales of tangible personal property.

16.51(1) Effective July 1, 1984, the sale of engraving, photography, retouching, printing and binding services is no longer the sale of enumerated services but the sale of tangible personal property. For the purposes of this subrule these services will be referred to as "property."

a. *Definitions and characterizations.*

(1) *"Binding."* Persons engaged in the business of binding any printed matter, other than for the purpose of ultimate sale at retail, are engaged in the sale of property, the gross receipts of which are subject to tax.

(2) *"Engraving"* includes the business of engraving on wood, metal, stone, or any other material.

(3) *"Photography"* is the art or process of producing images or objects upon a photosensitive surface by the chemical action of light or other radiant energy.

(4) *"Printing"* includes, but is not limited to, any type of printing, lithographing, mimeographing, photocopying and similar reproduction. The following activities are nonexclusive examples of property which are subject to tax: printing of pamphlets, leaflets, stationery, envelopes, folders, bond and stock certificates, abstracts, law briefs, business cards, matchbook covers, campaign posters and banners for the users thereof.

(5) *"Retouching"* includes the renovation or retouching of an existing likeness or design.

b. Reserved.

16.51(2) Effective May 18, 1984, the sale of vulcanizing, recapping and retreading services is no longer the sale of enumerated services, but is the sale of tangible personal property. For the purposes of this subrule these services will also be referred to as "property."

a. "Vulcanizing" means the act or process of treating crude rubber, synthetic rubber, or other rubber-like material with a chemical and subjecting it to heat in order to increase its strength and elasticity.

b. The effective date of the statute mandating change in the treatment of vulcanizing, recapping and retreading is May 18, 1984. However, the change in the treatment of this property is retroactive to January 1, 1979. The statute provides that no tax may be assessed for a retailer's treatment of the sale of this property as the sale of tangible personal property between the dates January 1, 1979, and May 17, 1984, inclusive. However, no refund may be claimed on any tax collected prior to May 18, 1984, if the basis for the refund claim is the argument that the sale of vulcanizing, recapping and retreading services is the sale of tangible personal property.

16.51(3) Effective July 1, 1997, sales of prepaid telephone calling cards and prepaid authorization numbers which furnish the holder with communication service are taxable as sales of tangible personal property. See rule 16.52(422,423) below for an explanation of the sales tax treatment of other types of prepaid merchandise cards.

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

701—16.52(422,423) Sales of prepaid merchandise cards. Sales of prepaid merchandise cards (other than prepaid telephone calling cards, see 16.51(3) above) are not sales of tangible personal property and are not sales which are subject to Iowa tax. If a purchaser uses a prepaid merchandise card to purchase taxable tangible personal property or taxable services, sales tax is computed on the gross receipts at the time of the sale and deducted from the prepaid amount remaining on the merchandise card.

EXAMPLE: Customer A purchases a prepaid merchandise card from ABC Clothing Company in the amount of $200.00. A purchases a sweater for $50.00 from ABC Clothing. ABC Clothing Company will debit A's card $52.50 ($50.00 × 1.05) or $53.00 ($50.00 × 1.06) if local option tax is applicable.

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

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

701—17.1(422,423) Gross receipts expended for educational, religious, and charitable purposes. Prior to July 1, 2001, net proceeds of an organization are exempt to the extent such proceeds are expended for educational, religious, or charitable purposes, except receipts from games of skill, games of chance, raffles, and bingo. Iowa Code section 422.45(3) requires that the activity from which the proceeds are derived must be from sales of educational, religious, or charitable activities and that the net proceeds be expended on these types of qualifying activities to be exempt from sales tax. For the purposes of determining if net proceeds are exempt from tax under this rule, subsequent to the sales event, the department analyzes the activities and the extent to which the net proceeds are expended on such activities. Net proceeds are exempt from sales tax to the extent that they are expended on educational, religious, or charitable activities.

17.1(1) *Evaluation.* For purposes of this rule, educational, religious, and charitable activities will be evaluated as follows:

a. Educational. The acquisition of knowledge tending to develop and train the individual. An activity that has as its primary purpose to educate by teaching. An activity that has as its primary objective to give educational instruction. An activity where the educational process is not merely incidental. An activity where the purpose is systematic instruction. The term educational purpose is synonymous with educational undertaking, and therefore, it can also include recreational activities as well as an activity designed to offer culture to the public. Activities which are directly related to the educational process of such as intramural sports and tests given to students or prospective students to measure intelligence, ability, or aptitude are considered educational for purposes of the exemption found in Iowa Code section 422.45(3). Municipal or civic art and science centers and libraries are also considered educational for purposes of the exemption.

EXAMPLE 1: Little Folks, a local preschool, has a chili supper to raise money for playground equipment, educational materials, and classroom furniture. The net proceeds from the supper are exempt from sales tax because the total amount of the net proceeds from the chili supper will be used for educational purposes. In addition, purchases made by the preschool may be exempt from tax if the preschool can meet the qualifications to be classified as an educational institution. See 701—17.11(422,423) for additional information regarding this exemption.

EXAMPLE 2: A local ballet company promotes the arts, provides classes and instruction on various types of dance, and sponsors and performs at numerous recitals that are free to the public. At its location, the ballet company has a gift shop in which patrons can purchase T-shirts, dance wear, and costumes. All proceeds are utilized by the ballet company to pay for its operational expenses and to perform the activities previously mentioned. The proceeds from this gift shop are exempt from Iowa sales tax to the extent they are utilized to pay for the stated educational activities.

b. Religious. The words "religious purpose" are analogous to religious worship. In the broadest of terms, it includes all forms of belief in the existence of superior beings capable of exercising power over the human race. As commonly accepted, it means the final recognition of God. It encompasses forms of worship, reference to one's views about God, or the relationship to one's creator. It also includes the use of property by a religious society or by a body of persons as a place for public worship.

EXAMPLE 1: A local church has a bake sale. All the net proceeds are returned to the church for religious purposes. Bake sales are generally exempt from sales tax unless the product is sold for "on-premises consumption" (see 701—20.5(422,423)), but the net proceeds are exempt from tax in any event because they are going to be used for religious purposes. However, any purchases made by the church that are not for resale are subject to sales tax. See 701—subrule 17.1(3).

EXAMPLE 2: Another local church conducts bingo games every Thursday. The net proceeds from the bingo activities will be used for religious purposes. However, bingo and other gambling activities are subject to sales tax regardless of the manner in which the proceeds are going to be used. See 17.1(5)*"t."*

c. Charitable. The term "charitable" may be applied to almost anything that tends to promote well-doing and well-being for public good or public welfare with no pecuniary profit to the one performing the service or the giving of gifts by persons kindly disposed toward others, without obligation. An activity for the benefit of the public at large which includes relief of poverty, advancement of education or religion, promotion of health, providing a government or municipal service, and other activities, the purpose of which is to benefit the community, is considered charitable. Maintenance of public parks is a valid charitable purpose. Schools, Red Cross, Boy Scouts, and relief agencies are charitable. Profit-making organizations are not charitable, but may engage in charitable activities. An activity where net earnings go to the benefit of any private shareholder or individual sponsoring the activity is not charitable.

EXAMPLE 1: A local, nonprofit animal shelter that provides shelter, medical care, socialization, and adoption services for homeless animals sells T-shirts and sweatshirts depicting rescued animals as a fund-raiser. All the net proceeds from the sales will go to and be used by the animal shelter to defray the costs it incurs. Sales of the T-shirts and sweatshirts would be exempt from sales tax since the net proceeds would be expended on a charitable purpose. Items purchased by the shelter for resale would also be exempt from sales tax. Items purchased by the shelter that are not for resale, such as dog or cat food that will be used by the shelter, would be subject to sales tax.

EXAMPLE 2: An American Legion post conducts a pancake supper as a fund-raiser for disabled veterans. Some of the net proceeds are used to benefit disabled veterans and the remainder will be used by the American Legion post to pay rent and utilities at its location. Pursuant to subrule 17.1(2), when a portion of the net proceeds are intended to be expended for a qualifying exempt activity, then sales tax should not be collected from the consumer. In turn, the sponsoring organization of the activity, in this case the American Legion post, would not need to remit sales tax on the portion of the net proceeds that is expended for the charitable activity. However, the portion of net proceeds used by the American Legion post to pay rent and utilities is subject to sales tax due to the fact that the net proceeds were not used for a qualifying activity.

EXAMPLE 3: A nonprofit hospital operates a gift shop. All of the proceeds are used to defray costs of hospital care for indigent patients who are unable to pay for such care. Due to the fact that all of the net proceeds are used for a charitable purpose, the proceeds are exempt from sales tax. In addition, effective July 1, 1998, purchases made by the nonprofit hospital are also exempt from sales tax.

17.1(2) *Entire proceeds.* An Attorney General's Opinion issued on November 2, 1967, indirectly offers a test of whether the gross receipts from an educational, charitable, or religious activity are entirely spent for such purpose. The test is whether all expenditures are so related to the activity so that the expenditure itself is for an educational, charitable, or religious purpose. The term "entire proceeds" is defined as those proceeds remaining after direct expenses have been deducted from the gross receipts derived from the activity or event. In addition to this definition, the expenses should be necessary and have an immediate bearing or relationship to the fulfillment of the activity. For example, the cost of food for a fund-raising meal would be a direct expense. However, the cost of a victory celebration because the fund-raising dinner was a success would not be a direct expense. Another example of where the direct expense rule would be violated would be where an educational institution invested proceeds from an art show into income-producing property and the remainder to purchase books for the library.

Examples of where cost of items would be a valid direct expense include, but are not limited to: 1. Cost of food, if for a fund-raising meal or the selling of food items. 2. Cost of tickets, if the receipts from the tickets are the principal receipts for the activity or event, or 3. Cost of entertainment, if the entertainment is the principal proceeds for the activity or event, such as a fund-raising dance.

For sales made on or after July 1, 1993, an exemption from sales tax shall be allowed even though the entire proceeds are not used for educational, religious, or charitable purposes. The exemption shall apply only to that portion of the proceeds used for educational, religious, or charitable purposes.

At the time of the selling event a presumption is made that sales tax will not be charged and collected from the consumer on the property or service sold. This particular exemption is dependent upon how the entire proceeds from the sale are expended, which follows the selling event. If after the event a portion

of the proceeds is expended for a noneducational, nonreligious, or noncharitable purpose, tax is due on that portion of the proceeds in the quarterly period in which that portion was expended.

17.1(3) *Purchases by organizations.* Organizations engaged in educational, religious, or charitable activities which sell tangible personal property or render, furnish or perform taxable services at retail in Iowa in connection with such activities shall be exempt from the payment of sales tax on their gross receipts derived from such sales, provided two requirements are met: (1) The activity must be educational, religious, or charitable and (2) the entire proceeds must be used for educational, religious, or charitable purposes.

Organizations that qualify for an exemption shall be entitled to purchase tangible personal property which they resell in connection with such activities without being charged tax on the property. They may give their suppliers a proper certificate of resale, indicating they are using the property for the exempt purpose as outlined and explaining that they do not hold a permit for the reason that their receipts from the sale of tangible personal property in connection with the activities are exempt from tax. Purchases by educational, religious, or charitable organizations which are not for resale, cannot be purchased free of sales tax. Nonprofit educational institutions should see rule 17.11(422,423) for taxable status of their purchases.

17.1(4) *General information.* The following is general information, important to organizations involved in educational, religious, or charitable activities:

a. There is no authority in the Iowa Code to grant a nonprofit corporation any type of blanket sales or use tax exemption on its purchases because the organization is exempted from federal or state income taxes.

b. Nonprofit corporations and educational, religious, or charitable organizations are subject to audit and should keep financial records for five years which meet acceptable accounting procedures.

c. Nonprofit corporations and educational, religious, or charitable organizations can be held responsible for the payment of sales and use taxes as would any other individual, retailer, or corporation.

d. Nonprofit corporations and educational, religious, or charitable organizations are not required to obtain a sales tax permit or any type of registration number if they are not making taxable sales. There is no provision in the Iowa Code which requires that such organizations have a special sales tax number or registration number and none are issued by the department of revenue. However, if such organizations are making sales which are subject to tax, then a sales tax permit must be obtained.

e. There is no statutory authority to require an organization or an individual to acquire an exemption letter or special certificate in order to claim an exemption under Iowa Code section 422.45(3). However, the burden of proof that an organization is entitled to an exemption lies with the organization. If an organization or individual wishes to notify the department of revenue of an upcoming event, or if an organization or individual wishes to inquire about the tax status of an activity, the department encourages contact with its main office in Des Moines, Iowa. Inquiries should be made in writing explaining in detail the event and how the proceeds therefrom are going to be used, and the time and place of the event. All inquiries should be made in advance of the event.

Under Iowa Code section 422.54, the department does have statutory authority to verify whether an individual or an organization which is making retail sales is required to file a return. Therefore, organizations or individuals may be asked to provide written information regarding the retail sales in a manner or form required by the department and return it to the nearest department of revenue field office within 30 days from the date the information was requested by the department.

Failure to complete and remit the requested information as required may result in a formal audit of the organization's or individual's records.

Inquiries regarding an individual's or an organization's sales tax exemption status relating to its fund-raising activities should be made to the department's taxpayer services section in Des Moines. Any decisions reached by the department of revenue are conditional pending an audit and verification of how the proceeds from the event were used.

f. Even though an activity or an organization has been recognized as one which could avail itself to the exemption provided by Iowa Code section 422.45(3), it can still be held responsible for sales tax

on gross receipts if the department finds, upon additional investigation, that the proceeds expended by the organization were not for educational, religious, or charitable purposes.

17.1(5) *Specific information.* Listed below are some common situations in which the sales tax exemption provided by section 422.45(3) may or may not be applicable:

a. Gross receipts from the sale of food and tangible personal property by individuals and organizations at bazaars, sporting events, fairs, carnivals, and centennial organizations, where the entire proceeds are expended for educational, religious, or charitable purposes, are exempt.

b. Gross receipts from sales by students where the gross receipts therefrom are expended for educational, religious, or charitable purposes or school-related functions, are exempt.

c. Gross receipts from the sales of food and tangible personal property by the Boy Scouts, Girl Scouts, YMCA, 4-H and their satellite organizations, where the entire proceeds therefrom are expended for educational, religious, or charitable purposes, are exempt.

d. Gross receipts from tickets or admissions, except to athletic events of educational institutions, to the extent net proceeds therefrom are expended for educational, religious, or charitable purposes, are exempt.

e. Gross receipts from church-related functions, such as the ladies' auxiliary, except gambling activities, where the entire proceeds are expended for educational, religious, or charitable purposes, are exempt.

f. Gross receipts from activities or events where the entire proceeds therefrom are donated to support governmental or municipal services are considered charitable, and therefore, are exempt. Also, entire proceeds expended for civic projects are exempt. An example would be proceeds from activities of the Junior Chamber of Commerce, Lions Clubs, or Kiwanis which are expended on a civic project.

g. Sales to organization members, primarily for the purpose of the selling organization, are exempt if the selling organization is educational, religious, or charitable. Examples are sales of uniforms, insignias, and equipment by Scout organizations to their members, sales of Bibles by a church to its members, and sales of choir robes by a church to its members.

h. A summer camp or ranch is generally considered a form of amusement which provides recreation to those who attend. If it is operated for profit, it is a form of commercial recreation and the gross receipts therefrom would be subject to sales tax. If it is not operated for profit, but is operated to help underprivileged children, or any child, and educates the child in some manner, the sales tax exemption would apply.

i. Rescinded IAB 11/20/96, effective 12/25/96.

j. Admissions to athletic events of educational institutions (except athletic events of elementary and secondary educational institutions) are taxable under Iowa Code section 422.43 regardless of how the proceeds are expended. Educational institutions having proceeds from athletic events should obtain an Iowa sales tax permit. See 701—subrule 16.26(2).

k. The gross receipts from admissions to and the sale of tangible personal property at centennial events are exempt from sales tax only if the entire proceeds from such sales are used for educational, religious, or charitable purposes. Whether a centennial is educational rather than a commercial amusement depends on the activities and events held at the centennial.

l. A professional golf tournament or any similar event where spectators view professional athletics is not an educational activity.

m. Generally, organizations which produce plays and concerts are not conducting educational activities unless there is evidence that the organization has as its primary objective to give educational instruction to the members of its organization, and the plays and concerts are a means to practice what is learned through the organization. However, each situation is factual and must be evaluated on its own merits.

n. The mere renting of facilities to be used by another person or organization for educational, religious, or charitable purposes is not an educational, religious or charitable activity.

o. Where proceeds are used to reimburse individuals for the cost of transporting their automobiles to an antique car show, the proceeds are not considered to be expended for educational purposes, and the gross receipts from the car show are subject to tax.

p. Activities to raise funds to send members of educational, religious, or charitable organizations to conventions and other similar events which are directly related to the purposes of the educational, religious, or charitable organization are within the exemption requirements provided in Iowa Code section 422.45(3).

q. Organizations whose function is to promote by advertising the use of a particular product which can be purchased at retail, even though educating the public, do not qualify for the exemption provided by Iowa Code section 422.45(3).

r. Sales of tangible personal property by civic and municipal art and science centers are of an educational value and the gross receipts therefrom are exempt from tax if the entire proceeds are expended for educational, religious, or charitable purposes.

s. Organizations such as the Big Ten Conference, Big Eight Conference, and the Missouri Valley Conference are, themselves, educational institutions since they are made up of member schools which are educational institutions. Any other public body made up of educational institutions could be entitled to the exemptions found in Iowa Code sections 422.45(5) and 422.45(8).

t. All proceeds from games of skill, games of chance, raffles, and bingo games as defined in Iowa Code chapter 99B are subject to sales tax regardless of who is operating the game and regardless of how the proceeds therefrom are expended except that those games operated by a county or a city are exempt from collecting the sales tax. See rule 701—18.39(422). When organizations operate such games, they are required to have a sales tax permit and a gambling license. See 195—Chapters 20 to 25 of the rules.

17.1(6) *Taxability of profits on or after July 1, 2001.* Effective July 1, 2001, gross receipts from the sale or rental of tangible personal property or services in which the profits are used by or donated to a qualifying nonprofit entity are exempt from Iowa sales or use tax. The profits must be expended on educational, religious, or charitable activities in order for the sales transactions to be exempt from sales tax. For the purposes of determining if sales transactions are exempt from tax under this rule, the department determines the extent to which the profits are expended. Sales transactions are exempt from sales tax to the extent that profits are expended on educational, religious, or charitable purposes.

This exemption does not apply to the gross receipts from games of skill, games of chance, raffles, and bingo games as defined in Iowa Code chapter 99B.

a. To qualify for exemption from tax, all of the following criteria must be met:

(1) The gross receipts and profits must be from a retail sale of tangible personal property or taxable services;

(2) The profits from the sale must be used by or donated to one of the following:

1. An entity that is exempt from federal income tax under Internal Revenue Code Section 501(c)(3);

2. A government entity; or

3. A private nonprofit educational institution;

(3) The exemption is allowed to the extent that the profits are expended for any of the following purposes:

1. Educational. For purposes of this rule, "educational" means any of the following:

- The acquisition of knowledge tending to develop and train the individual.
- An activity that has as its primary purpose to educate by teaching.
- An activity that has as its primary objective to give educational instruction.
- An activity for which the educational process is not merely incidental. An activity where the purpose is systematic instruction.

The term "educational purpose" is synonymous with "educational undertaking" and, therefore, it can include recreational activities as well as an activity designed to offer culture to the public. Activities which are directly related to the educational process such as intramural sports and tests given to students or prospective students to measure intelligence, ability, or aptitude are considered educational for purposes of the exemption found in Iowa Code section 422.45(3). Municipal or civic science centers and libraries are also considered educational for purposes of the exemption.

EXAMPLE 1: Little Folks, a local nonprofit preschool that is exempt from federal tax under IRC Section 501(c)(3), has a chili supper to raise money for playground equipment, educational materials,

and classroom furniture. The sales transactions from the supper are exempt from sales tax because the total amount of the profits from the chili supper will be used for educational purposes. In addition, purchases made by the preschool may be exempt from tax if the preschool can meet the qualifications to be classified as a private nonprofit educational institution. See 701—17.11(422,423) for additional information regarding this exemption.

EXAMPLE 2: A local nonprofit ballet company, which is exempt from federal income tax under IRC Section 501(c)(3), promotes the arts, provides classes and instruction on various types of dance, and sponsors and performs at numerous recitals that are free to the public. At its location, the ballet company has a gift shop in which patrons can purchase T-shirts, dance wear, and costumes. All profits are utilized by the ballet company to pay for its operational expenses and to perform the activities pre viously mentioned. The gross receipts from this gift shop are exempt from Iowa sales tax to the extent that the profits therefrom are utilized to pay for the stated educational activities.

2. Religious. The phrase "religious purpose" is analogous to "religious worship." In the broadest of terms, it includes all forms of belief in the existence of superior beings or things capable of exercising power over the human race. It also includes the use of property by a religious society or by a body of persons as a place for public worship.

EXAMPLE 1: A local church, which is exempt from federal income tax under IRC Section 501(c)(3), has a bake sale. All of the bake sale profits are returned to the church for religious purposes. Bake sales are generally exempt from sales tax unless the product is sold for "on-premises consumption" (see 701—20.5(422,423)), but the bake sale profits are exempt from tax in any event because they are to be used for religious purposes. However, generally, any purchases made by the church that are not for resale are subject to sales tax. See 701—subrule 17.1(3).

EXAMPLE 2: Another local church, exempt from federal income tax under IRC Section 501(c)(3), conducts bingo games every Thursday. The profits from the bingo activities will be used for religious purposes. However, bingo and other gambling activities are subject to sales tax regardless of the manner in which the profits are going to be used. See 17.1(5)*"t."*

3. Charitable. A charitable act is an act done out of goodwill, benevolence, and a desire to add or 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. The term "charitable" may be applied to almost anything that tends to promote well-doing and well-being for public good or public welfare with no pecuniary profit inuring to the one performing the service or the giving of gifts by persons kindly disposed toward others, without obligation. An activity for the benefit of the public at large which includes relief of poverty, advancement of education or religion, promotion of health, providing a government or municipal service, and other activities, the purpose of which is to benefit the community, is considered charitable. Maintenance of public parks is a valid charitable purpose. Schools, the Red Cross, the Boy Scouts, and relief agencies are charitable. Profit-making organizations are not charitable, but may donate to a qualifying organization that is a charitable organization or that engages in charitable activities. An activity from which the profits go to the benefit of any private shareholder or individual sponsoring the activity is not charitable. However, the casual sale exemption may apply to this type of situation. See 701—18.28(422,423) for information regarding the casual sale exemption.

EXAMPLE 1: A local, nonprofit animal shelter that is exempt from federal income tax under IRC Section 501(c)(3) provides shelter, medical care, socialization, and adoption services for homeless animals and, as a fund-raiser, sells T-shirts and sweatshirts depicting rescued animals. All of the profits from the sales will go to and be used by the animal shelter to defray the costs it incurs. Sales of the T-shirts and sweatshirts would be exempt from sales tax since the profits from the sales would be expended on a charitable purpose. Items purchased by the shelter for resale would also be exempt from sales tax. Items purchased by the shelter that are not for resale, such as dog or cat food that will be used by the shelter, would be subject to sales tax.

EXAMPLE 2: A nonprofit hospital, which has received exemption from federal income tax under IRC Section 501(c)(3), operates a gift shop. All of the profits are used to defray costs of hospital care for indigent patients who are unable to pay for such care. Due to the fact that all of the profits from the gift shop are used for a charitable purpose, the gross receipts would be exempt from sales tax. In addition,

effective July 1, 1998, purchases made by the nonprofit hospital would also be exempt from sales tax. See Iowa Code section 422.45(54).

b. Profits. Gross receipts are exempt from sales tax to the extent that the profits are used by or donated to a qualifying organization and used for a qualifying activity. Profits are the gross receipts minus qualifying expenditures. The test of what is a qualifying expenditure is whether all expenditures are so related to the activity so that the expenditure itself is for an educational, charitable, or religious purpose. The term "profits" is defined as those proceeds remaining after direct expenses have been deducted from the gross receipts derived from the activity or event. In addition to this definition, the expenses should be necessary and have an immediate bearing or relationship to the fulfillment of the activity. For example, the cost of food for a fundraising meal would be a direct expense. However, the cost of a victory celebration because the fundraising dinner was a success would not be a direct expense. Another example of when the direct expense rule would be violated is a situation in which an educational institution invests profits from an art show into income-producing property and uses the remainder of the profits to purchase books for the library.

Examples of when the cost of items would be a valid direct expense include, but are not limited to: (1) cost of food, if for a fundraising meal or the selling of food items; (2) cost of tickets, if the receipts from the tickets are the principal receipts for the activity or event; or (3) cost of entertainment, if the entertainment is the principal source of proceeds for the activity or event, such as a fundraising dance.

At the time of the selling event, a presumption is made that sales tax will not be charged to and collected from the consumer on the property or service sold. This particular exemption is dependent upon how the profits from the sale are expended, which follows the selling event. If after the event a portion of the profits is expended for a noneducational, nonreligious, or noncharitable purpose, tax is due on that portion of the gross receipts in the quarterly period in which that portion was expended.

c. Purchases. Any organization that purchases tangible personal property or services for resale, the profits from the sales of which will be used by or donated to a qualifying organization, shall not pay tax on the property or services purchased for resale. Organizations that purchase tangible personal property or services for resale may give their suppliers a proper certificate of resale, indicating that the organizations are using the property for the exempt purpose as outlined and explaining that they do not hold a permit for the reason that their receipts from the sale of tangible personal property in connection with the activities are exempt from tax. Purchases by qualifying organizations which are not for resale cannot be purchased free of sales tax. Nonprofit private educational institutions should see rule 17.11(422,423) for taxable status of their purchases.

d. General information. The following is general information that is important to organizations involved in educational, religious, or charitable activities:

(1) There is no authority in the Iowa Code to grant a nonprofit corporation any type of blanket sales or use tax exemption on its purchases because the organization is exempted from federal or state income taxes.

(2) Nonprofit corporations and educational, religious, or charitable organizations are subject to audit and should keep for three years financial records which meet acceptable accounting procedures.

(3) Nonprofit corporations and educational, religious, or charitable organizations can be held responsible for the payment of sales and use taxes as would any other individual, retailer, or corporation.

(4) Nonprofit corporations and educational, religious, or charitable organizations are not required to obtain a sales tax permit or any type of registration number if they are not making taxable sales. There is no provision in the Iowa Code which requires that such organizations have a special sales tax number or registration number and none are issued by the department of revenue. However, if such organizations are making sales that are subject to tax, then a sales tax permit must be obtained.

(5) There is no statutory authority to require an organization or an individual to acquire an exemption letter or special certificate in order to claim an exemption under Iowa Code section 422.45(3). However, the burden of proof that an organization is entitled to an exemption lies with the organization. If an organization or individual wishes to notify the department of revenue of an upcoming event, or if an organization or individual wishes to inquire about the tax status of an activity, the department encourages contact with its main office in Des Moines, Iowa. Inquiries should be made in writing

explaining in detail the event, how the profits therefrom are going to be used, and the time and place of the event. All inquiries should be made in advance of the event.

Under Iowa Code section 422.54, the department does have statutory authority to verify whether an individual or an organization which is making retail sales is required to file a return. Therefore, organizations or individuals may be asked to provide written information regarding the retail sales in a manner or form required by the department and return it to the nearest department of revenue field office within 30 days from the date the information was requested by the department.

Failure to complete and remit the requested information as required may result in a formal audit of the records of the organization or individual.

Inquiries regarding an individual's or an organization's sales tax exemption status relating to its fundraising activities should be made to the department's taxpayer services section in Des Moines. Any decisions reached by the department of revenue are conditional pending an audit and verification of how the profits from the event were used.

(6) Even though an activity or an organization has been recognized as one which could avail itself to the exemption provided by Iowa Code section 422.45(3), it can still be held responsible for sales tax on gross receipts if the department finds, upon additional investigation, that the proceeds expended by the organization were not for educational, religious, or charitable purposes.

(7) The gross receipts from sales made by a nonprofit organization that engages in the sale of any tangible personal property or enumerated services will be presumed to be taxable, unless the taxpayer can present proof that the profits are expended for an educational, religious, or charitable purpose. For example, XYZ is a certified nonprofit organization by the Internal Revenue Service under Section 501(c)(3) of the Internal Revenue Code. XYZ has an ice-skating facility and charges all patrons to use the facility. Iowa does not presume that the gross receipts from sales by XYZ are exempt just because XYZ is a nonprofit organization. Instead, there is a presumption that the gross receipts received by XYZ from its patrons would be subject to tax, unless XYZ can show that the profits are expended for a qualifying educational, religious, or charitable purpose or that XYZ qualifies for another exemption as set forth in Iowa Code section 422.45.

e. Specific information. Listed below are some common situations in which the sales tax exemption provided by Iowa Code section 422.45(3) may or may not be applicable:

(1) Gross receipts from the sales of food and tangible personal property by individuals and organizations at bazaars, sporting events, fairs, carnivals, and centennial celebrations are exempt to the extent the profits are used by or donated to a qualifying organization and are expended for educational, religious, or charitable purposes.

(2) Gross receipts from sales by students are exempt to the extent the profits therefrom are donated to a qualifying organization and are expended for educational, religious, or charitable purposes.

(3) Gross receipts from the sales of food and tangible personal property by the Boy Scouts, Girl Scouts, YMCA, 4-H and their satellite organizations are exempt to the extent that the profits are expended for educational, religious, or charitable purposes.

(4) Gross receipts from tickets or admissions, except for gross receipts from tickets or admissions to athletic events of educational institutions, which are used or donated to a qualifying organization are exempt to the extent the profits therefrom are expended for educational, religious, or charitable purposes.

(5) Gross receipts from church-related functions, such as the ladies' auxiliary, except gambling activities, are exempt to the extent the profits therefrom are donated to or used by a qualifying organization and are expended for educational, religious, or charitable purposes.

(6) Gross receipts from activities or events to the extent the profits therefrom are donated and expended to support governmental or municipal services are considered charitable and, therefore, are exempt. Also, profits from these activities, to the extent they are expended for civic projects, are exempt. An example would be profits from activities of the Junior Chamber of Commerce, Lions Club, or Kiwanis which are expended on a civic project.

(7) Sales to organization members, primarily for the purpose of the selling organization, are exempt if the selling organization is a qualifying organization to the extent the profits are expended for educational, religious, or charitable purposes. Examples are sales of uniforms, insignias, and equipment

by Scout organizations to their members, sales of Bibles by a church to its members, and sales of choir robes by a church to its members.

(8) A summer camp or ranch is generally considered a form of amusement which provides recreation to those who attend. If it is operated for profit, it is a form of commercial recreation and the gross receipts therefrom would be subject to sales tax. If it is not operated for profit, has received exemption from federal income tax under IRC Section 501(c)(3), and the profits are expended for a qualifying purpose, such as to help underprivileged children or to educate a child in some manner, the sales tax exemption would apply.

(9) Admissions to athletic events of educational institutions (except athletic events of elementary and secondary educational institutions) are taxable under Iowa Code section 422.43 regardless of how the proceeds are expended. Educational institutions receiving proceeds from athletic events should obtain an Iowa sales tax permit. See 701—subrule 16.26(2).

(10) The gross receipts from admissions to and the sale of tangible personal property at centennial events are exempt from sales tax if the organization sponsoring the event is a qualifying organization or the profits are donated to a qualifying organization and to the extent the profits from such sales are expended for educational, religious, or charitable purposes. Whether a centennial is educational rather than a commercial amusement depends on the activities and events held at the centennial.

(11) A professional golf tournament or any similar event at which spectators view professional athletics is not an educational activity. However, if the profits from the golf tournament are donated to a qualifying organization and expended for educational, religious, or charitable purposes, the sales are exempt from tax.

(12) Generally, qualifying nonprofit organizations which produce plays and concerts are not conducting educational activities unless there is evidence that the organization has as its primary objective to give educational instruction to the members of its organization, and the plays and concerts are a means to practice what is learned through the organization. However, each situation is factual and must be evaluated on its own merits.

(13) The mere renting of facilities to be used by another person or organization for educational, religious, or charitable purposes is not an educational, religious, or charitable activity.

(14) When profits from an activity are used to reimburse individuals for the cost of transporting their automobiles to an antique car show, the profits are not considered to be expended for educational purposes, and the gross receipts from the car show are subject to tax.

(15) Activities to raise funds to send members of qualifying educational, religious, or charitable organizations to conventions and other similar events which are directly related to the purposes of the qualifying educational, religious, or charitable organization are within the exemption requirements provided in Iowa Code section 422.45(3).

(16) An organization whose function is to promote by advertising the use of a particular product which can be purchased at retail does not qualify for the exemption provided by Iowa Code section 422.45(3), even though promotion by advertising may educate the public.

(17) Sales of tangible personal property by civic and municipal art and science centers are of an educational value and the gross receipts therefrom are exempt to the extent the profits are expended for educational, religious, or charitable purposes.

(18) Organizations such as the Big Ten Conference, Big 12 Conference, and the Missouri Valley Conference are, themselves, educational institutions since they are made up of member schools which are educational institutions. Any other public body made up of educational institutions could be entitled to the exemptions found in Iowa Code sections 422.45(5) and 422.45(8).

(19) All proceeds from games of skill, games of chance, raffles, and bingo games as defined in Iowa Code chapter 99B are subject to sales tax regardless of who is operating the game and regardless of how the proceeds therefrom are expended, except that those games operated by a county or a city are exempt from collecting the sales tax. See rule 701—18.39(422). When organizations operate such games, they are required to have a sales tax permit and a gambling license. See 481—Chapter 100.

This rule is intended to implement 2001 Iowa Acts, House File 736, section 2, and Iowa Code sections 422.45(5), 422.45(8), and 423.1.

701—17.2(422) Fuel used in processing—when exempt. Receipts from the sale of tangible personal property which is to be consumed as fuel in creating power, heat or steam for processing, including grain drying or for generating electric current, shall be exempt from sales tax.

The exemption provided in the case of tangible personal property consumed as fuel in creating heat applies only when such heat is directly applied in the actual processing of tangible personal property intended to be sold ultimately at retail, as distinguished from heat which is used for the purpose of heating buildings, whether such buildings be manufacturing or processing plants, warehouses or offices. *Chicago, B. & Q. R. Co. v. Iowa State Tax Commission,* 259 Iowa 178, 142 N.W.2d 407 (1966).

Fuel used in processing is exempt to creameries, dairies or ice cream factories only to the extent that the fuel is used in the actual processing of the finished product. This does not include combustible fuel used for storage after the manufacturing process is completed. For the treatment of electricity or steam used as a fuel or for any other purposes in processing by creameries, dairies, ice cream factories or other processors before, on or after July 1, 1985, see rule 17.3(422,423).

This rule is intended to implement Iowa Code section 422.42(3).

701—17.3(422,423) Processing exemptions. Carbon dioxide in a liquid, solid or gaseous form, electricity, steam, or other taxable services to be used in the processing of tangible personal property intended to be sold ultimately at retail are exempt from sales tax.

17.3(1) *Services used in processing.* Electricity, steam, or any other taxable service is used in processing only if the taxable service is used in any operation which subjects raw material to some special treatment which changes, by artificial or natural means, the form, context, or condition of the raw material and results in a change of the raw material into marketable tangible personal property intended to be sold ultimately at retail. The following are nonexclusive examples of what would and would not be considered electricity, steam or other taxable services used in processing:

a. The gross receipts from the sale of electricity or steam consumed as power or used in the actual processing of tangible personal property intended to be sold ultimately at retail would be exempt from tax. The gross receipts are to be distinguished from those of electricity or steam consumed for the purpose of lighting, ventilating, or heating manufacturing plants, warehouses, or offices. These latter gross receipts would be taxable.

b. The gross receipts from electricity used in the freezing of tangible personal property, ultimately to be sold at retail, to make the property marketable would be exempt from sales tax, *Fischer Artificial Ice & Cold Storage Co. v. Iowa State Tax Commission,* 81 N.W.2d 437 (Iowa 1957).

c. Electricity used merely in the refrigeration or the holding of tangible personal property for the purpose of preventing spoilage or to preserve the property in its present state would not be "used in processing" and, therefore, its gross receipts would be subject to tax, Fischer Artificial Ice, supra.

d. Prior to July 1, 1995, electricity or other fuel used by greenhouses and their related facilities for the purposes of growing plants is not under any circumstances fuel which is used in processing, and the gross receipts from its sales would be subject to tax. On and after July 1, 1995, electricity or other fuel used for heating or cooling of a building used in the commercial production of flowering, ornamental, or vegetable plants, is exempt from tax. See 701—subrule 18.57(2) for more information.

17.3(2) *Carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and other taxable services used in processing.* An expanded definition of "processing" is allowed to manufacturers of food products for human consumption using carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and other taxable services. The definition of processing applicable to persons who are not manufacturers of food products but who are using taxable services is found in subrule 17.3(1).

a. "Manufacturer" characterized. A manufacturer is a person or entity different from a merchant, dealer, or retailer. See *Commonwealth v. Thackara Mfg. Co.,* 27 A. 13 (Pa. 1893). In order for a business to be a manufacturer the principal business of that business must be manufacturing. See *Associated General Contractors v. State Tax Commission,* 123 N.W.2d 922 (Iowa 1963). Another distinction is that a merchant or retailer sells in order to earn a profit and a manufacturer sells to take profits already earned from prior activity. See *State v. Coastal Petrol Inc.,* 198 So. 610 (Ala. 1940). A person primarily engaged in selling tangible personal property in order to earn a profit and only incidentally engaged

in creating products suitable for use from raw materials is not a manufacturer. A retail grocery store, incidentally and not primarily engaged in manufacturing activities such as meat cutting or production and packaging of baked goods, is not a "manufacturer of food products for human consumption" and not entitled to claim the special processing exemption allowed to those manufacturers. Retail food stores, restaurants, and other persons incidentally engaged in food manufacturing activities can, however, continue to claim on their incidental processing activities the processing exemption allowed to persons who are not manufacturers of food products for human consumption. See subrule 17.3(1).

b. For sales occurring on and after July 1, 1985, the following activities constitute processing when performed by a manufacturer to create food products for human consumption. Any carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, or other taxable services primarily used in the performance of these activities is exempt from tax.

(1) Treatment of material that changes its form, context, or condition in order to produce a marketable food product for human consumption. "Special" treatment of the material to change its form, context, or condition is not necessary. Examples of "treatment" which would not be "special" are the following: washing, sorting and grading of fruits or vegetables; the washing, sorting, and grading of eggs; and the mixing or agitation of liquids. By way of contrast, sterilization would be "special treatment."

(2) Maintenance of quality or integrity of the food product and the maintenance or the changing of temperature levels necessary to avoid spoilage or to hold the food in marketable condition. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or other taxable service used in freezers, heaters, coolers, refrigerators, or evaporators used in cooling or heating which holds the food product at a temperature necessary to maintain quality or integrity or avoid spoilage of the food or to hold the food product in marketable condition is exempt from tax. It is not necessary that the taxable service be used to raise or lower the temperature of the food. Also, processing of food products for human consumption does not cease when the food product is in marketable form. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or other taxable service used to maintain or to change a temperature necessary to keep the product marketable is exempt from tax.

(3) Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or other taxable service primarily used in the maintenance of environmental conditions necessary for the safe or efficient use of machinery or material used to produce the food product is exempt from tax. For example, electricity used to air-condition a room in which meat is stored is exempt from tax if the purpose of the air conditioning is to maintain the meat in a condition in which it is easy to slice rather than for the comfort of the employees who work in the room.

(4) Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or other taxable service primarily used in sanitation and quality control activities is exempt from tax. Nonexclusive examples exempt from tax include taxable services used in pH meters, microbiology counters and incubators used to test the purity or sanitary nature of a food product. For example, electricity used in egg-candling lights would be exempt from tax. Also, electricity, steam, or any other taxable service used to power equipment which cleans and sterilizes food production equipment would be exempt from tax. Electricity used to power refrigerators used to store food samples for testing would be exempt from tax. Finally, electricity used to power "bug lights" or other insect killing equipment used in areas where food products are manufactured or stored would be exempt from tax.

(5) Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or other taxable service used in the formation of packaging for marketable food products for human consumption is exempt from tax. For example, electricity used by a food manufacturer in plastic bottle forming machines is exempt from tax if the plastic bottles will be used to hold a marketable food product, such as milk. Any electricity, steam or other taxable service used in the heating, compounding, liquefying and forming of plastic pellets into these plastic bottles is exempt.

(6) Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or other taxable service used in placement of the food product into shipping containers is exempt from tax. For example, electricity used by a food manufacturer to place food products into packing cases, pallets, crates, shipping cases, or other similar receptacles is exempt.

(7) Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or other taxable service used to move material which will become a marketable food product or used to move the marketable food product itself until shipment from the building of manufacture is exempt from tax. This includes, but is not limited to, taxable services used in pumps, conveyors, forklifts, and freight elevators moving the material or food product and taxable services used in door openers which open doors for forklifts or other devices moving the material or product. Any loading dock which is attached to a building of manufacture is a part of that building. Any electricity, steam, or other taxable service used to move any food products to a loading dock is exempt from tax. If a food product is carried outside its building of manufacture by any conveyor belt system, electricity used by any portion of the system located outside the building is taxable.

17.3(3) *Measurement of taxable and nontaxable use of electricity and steam.* The exemption provided in the case of electricity or steam applies only upon the gross receipts from the sale of electricity or steam when the energy is consumed as power or is used in the processing of food products or other tangible personal property intended to be sold ultimately at retail, as distinguished from electricity or steam which is consumed for taxable purposes. When practical, electricity or steam consumed as power or used directly in processing must be separately metered and separately billed by the supplier thereof to clearly distinguish energy so consumed from electricity or steam which is consumed for purposes or under conditions where the exemption would not apply. If it is impractical to separately meter electricity or steam which is exempt from that electricity or steam upon which tax will apply, the purchaser must furnish an exemption certificate to the supplier with respect to what percentage of electricity or steam in the case of each purchaser is subject to the exemption. See 701—subrule 15.3(2). The exemption certificate must be supported by a study showing how the percentage was developed. When a certificate and study are accepted by the supplier as a basis for determining exemption, any changes in the processing method, changes in equipment or alterations in plant size or capacity affecting the percentage of exemption will necessitate the filing of a new and revised statement by the purchaser. When the electric or steam energy is separately metered, enabling the supplier to accurately apply the exemption in the case of processing energy, the purchaser need only file an exemption certificate since the supplier, under such conditions, will separately record and compute the consumption of energy which is exempt from tax apart from that energy which is subject to tax.

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

701—17.4(422,423) Commercial fertilizer and agricultural limestone. Prior to July 1, 1987, sales of all commercial fertilizer and agricultural limestone were exempt from tax. On and subsequent to that date, sales of commercial fertilizer and agricultural limestone are exempt from tax only if the purchaser will utilize the fertilizer or limestone for the health promotion of plants which are produced as part of agricultural production for market. See subrule 17.9(3) for characterizations of "Agricultural production" and "Plants" respectively. Plant hormones are considered to be commercial fertilizer. By way of nonexclusive example, commercial fertilizer sold for application on a lawn, golf course, or cemetery would be taxable.

This rule is intended to implement Iowa Code section 422.42(3).

701—17.5(422,423) Sales to the American Red Cross, the Coast Guard Auxiliary, Navy-Marine Corps Relief Society, and U.S.O. Receipts from the sale of tangible personal property or from rendering, furnishing, or providing taxable services to the American Red Cross, Coast Guard Auxiliary, Navy-Marine Corps Relief Society, and U.S.O. shall be exempt from sales tax.

Purchases made by the Red Cross, Coast Guard Auxiliary, Navy-Marine Corps Relief Society or U.S.O. outside of Iowa for use in Iowa shall be exempt from use tax.

Department of Employment v. United States, 1966, 385 U.S. 355, 87 S.Ct. 464, 17L.Ed.2d 414.

This rule is intended to implement Iowa Code sections 422.45(1), 422.45(5), and 423.4(4).

701—17.6(422,423) Sales of vehicles subject to registration—new and used—by dealers. Receipts derived from the sale at retail in Iowa of new and used vehicles subject to registration under the motor

vehicle laws of Iowa shall be exempt from sales tax. When the vehicles are registered at the office of the county treasurer or the motor vehicle registration division, Iowa department of transportation, the tax is collected as use tax. Vehicle dealers selling tangible personal property or taxable services in Iowa, in addition to new or used vehicles, shall be required to hold a permit. Upon filing their quarterly returns, dealers shall show the amount of their gross receipts derived from the sale of new and used vehicles subject to registration and shall take appropriate deductions.

The purchaser of a new or used vehicle subject to registration shall be required to pay use tax when the vehicle is registered in Iowa under the Iowa motor vehicle law; and, the county treasurer or the motor vehicle registration division, department of transportation (whichever issues the registration) shall collect use tax.

This rule is intended to implement Iowa Code sections 422.45(4), 423.7 and 423.8.

701—17.7(422,423) Sales to certain federal corporations. The department holds that the following are some of the federal corporations immune from the imposition of sales and use tax in connection with their purchases:

1. Central Bank for Cooperatives and Banks for Cooperatives
2. Commodity Credit Corporation
3. Farm Credit Banks
4. Farmers Home Administration
5. Federal Credit Unions
6. Federal Crop Insurance Corporation
7. Federal Deposit Insurance Corporation
8. Federal Financing Bank
9. Federal Home Loan Banks
10. Federal Intermediate Credit Banks
11. Federal Land Banks and Federal Land Bank Associations
12. Federal National Mortgage Association
13. Federal Reserve Bank
14. Federal Savings & Loan Insurance Corporation
15. Production Credit Association
16. Student Loan Marketing Association
17. Tennessee Valley Authority

The federal statutes creating the above corporations contain provisions substantially identical with Section 26 of the Federal Farm Loan Act which has been construed as barring the imposition of state and local sales taxes.

This rule is intended to implement Iowa Code sections 422.45(1), 422.45(5), and 423.4(4).

701—17.8(422) Sales in interstate commerce—goods transported or shipped from this state. When tangible personal property is sold within the state and it is transported to a point outside the state, or it is transferred to a common carrier, to the mails, or to parcel post for shipment to a point without the state, sales tax shall not apply, provided the property is not returned to a point within the state except solely in the course of interstate commerce or transportation. See 701—subrule 26.2(3) for a description of an exemption applicable to services performed on the above-described property on or after May 22, 1999.

EXAMPLE: Company A sells point-of-sale computer equipment. The company is located in Des Moines, Iowa. Company A enters into a contract with company B to sell the latter company a large number of point-of-sale computers. Company B is located in Little Rock, Arkansas. A transfers possession of the computers to a common carrier in Des Moines, Iowa, for shipment to B in Little Rock. Sale of the computers is exempt from Iowa sales tax.

17.8(1) *Proof of transportation.* The most acceptable proof of transportation outside the state shall be:

a. A waybill or bill of lading made out to the retailer's order calling for transport; or

b. An insurance or registry receipt issued by the United States postal department, or a post office department's receipts; or

c. A trip sheet signed by the retailer's transport agency which shows the signature and address of the person outside the state who received the transported goods.

17.8(2) *Certificate of out-of-state delivery.* Iowa retailers making delivery and therefore sales out of state shall use a certificate in lieu of trip sheets. The certificate shall be completed at the time of sale, identifying the merchandise delivered and signed by the purchaser upon delivery.

17.8(3) *Exemption not applicable.* Sales tax shall apply when tangible personal property is delivered in the state to the buyer or the buyer's agent, even though the buyer may subsequently transport that property out of the state and, also, when tangible personal property is sold in Iowa to a carrier and then delivered by the purchasing carrier to a point outside of Iowa for the carrier's use.

This rule is intended to implement Iowa Code section 422.45(46).

701—17.9(422,423) Sales of breeding livestock, fowl and certain other property used in agricultural production. The gross receipts from the sales of the following tangible personal property relating to agricultural production is exempt from tax.

17.9(1) Sales of agricultural breeding livestock. *"Livestock"* means domestic animals which are raised on a farm as a source of food or clothing, *Van Clief v. Comptroller of State of Md.,* 126 A.2d 865 (Md. 1956) and In the Matter of Simonsen Mill Inc., Declaratory Ruling of the State Board, Docket No. 211, April 24, 1980. The term includes cattle, sheep, hogs, and goats. On and after July 1, 1995, ostriches, rheas, and emus are livestock and their sales are also exempt from tax. On and after July 1, 1997, fish and any other animals which are products of aquaculture are considered to be livestock as well. Effective March 6, 2002, and retroactively to April 1, 1995, farm deer and bison are also included in the term "livestock." "Farm deer" are defined as set forth in Iowa Code section 189A.2 and commonly include animals belonging to the cervidae family, such as fallow deer, red deer or elk and sika. However, "farm deer" does not include unmarked free-ranging elk. Sales of the foregoing are exempt from tax. Excluded from the term are horses, mules, other draft animals, dogs, cats, and other pets. Also excluded from the term are mink, fish (prior to July 1, 1997), bees, or other nondomesticated animals even if raised in captivity and even if raised as a source of food or clothing. Also excluded is any animal raised for racing. Effective May 23, 2003, the definition of "livestock" includes whitetail deer and mule deer, but not free-ranging whitetail deer and mule deer.

The sale of agricultural livestock is exempt from tax under this subrule only if the purchaser intends to use the livestock primarily for breeding at the time of purchase. The sale of agricultural livestock which is capable of, but will not be used for breeding or primarily for breeding, is not exempt from tax under this subrule. However, sales of most nonbreeding agricultural livestock to farmers would be a sale for resale and exempt from tax.

EXAMPLE 1: A breeding service purchases a prize bull from a farmer. At the time of sale the intent is to use the bull for breeding other cattle. The sale of the bull is exempt from tax even though three years later the breeding service sells the bull to a meat packer.

EXAMPLE 2: A farmer purchases dairy cows. To ensure production of milk over a sustained period of time, dairy cows must be bred to produce calves. If a farmer purchases dairy cows for the primary purpose of using them to produce milk and incidentally breeds them to ensure that this milk will be produced, the sale of the dairy cows to the farmer is not exempt from tax under this subrule. If the farmer purchases the dairy cows for the primary purpose of using them to produce calves and, incidental to that purpose, at times sells the milk which the cows produce, the sale of the dairy cows to the farmer is exempt from tax under this subrule.

17.9(2) Sales of domesticated fowl. *"Domesticated fowl"* means any domesticated bird raised as a source of food, either eggs or meat. The word includes, but is not limited to, chickens, ducks, turkeys, and pigeons raised for meat rather than for racing or as pets. On and after July 1, 1995, the word includes ostriches, rheas, and emus. Excluded from the meaning of the word are nondomesticated birds, such as pheasants, raised for meat or any other purpose. The purchase of any domesticated fowl for the purpose

of providing eggs or meat is exempt from tax, whether purchased by a person engaged in agricultural production or not.

17.9(3) Sales of herbicides, pesticides, insecticides, food, medication, and agricultural drainage tile (including gross receipts from the installation of agricultural drainage tile) which are to be used in disease, weed, or insect control or health promotion of plants or livestock produced as part of agricultural production for market are exempt from tax. On and after April 1, 1990, sales of adjuvants, surfactants, and other products which enhance the effects of herbicides, pesticides, or insecticides used for the reasons listed above are also exempt from tax. As used in this subrule:

a. *"Adjuvant"* is any substance which is added to a herbicide, pesticide, or insecticide to increase its potency.

b. *"Agricultural production"* is limited to what would ordinarily be considered a farming operation undertaken for profit. The term refers to the raising of crops or livestock for market on an acreage. See *Bezdek's Inc. v. Iowa Department of Revenue*(Linn Cty. Dist. Ct., May 14, 1984). Included within the meaning of the phrase "agricultural production" is any feedlot operation whether or not the land upon which a feedlot operation is located is used to grow crops to feed the livestock in the feedlot, and regardless of whether or not the livestock fed are owned by persons conducting the feedlot operation; operations growing and raising hybrid seed corn or other seed for sale to farmers; and nurseries, ranches, orchards, and dairies. On and after July 1, 1995, "agricultural production" includes the raising of flowering, ornamental, or vegetable plants in commercial greenhouse or elsewhere for sale in the ordinary course of business. On and after July 1, 1997, the phrase also includes any kind of aquaculture. The following are excluded from the meaning of "agricultural production": commercial greenhouses (prior to July 1, 1995); logging; catfish raising (prior to July 1, 1997); production of Christmas trees; beekeeping; and the raising of mink, other nondomesticated furbearing animals, and nondomesticated fowl (other than ostriches, rheas, and emus). The above list of exclusions and inclusions within the term "agricultural production" is not exhaustive.

c. *"Food"* includes vitamins, minerals, other nutritional food supplements, and hormones sold to promote the growth of livestock.

d. *"Herbicide"* means any substance intended to prevent, destroy, or retard the growth of plants including fungi. The term shall include preemergence, postemergence, lay-by, pasture, defoliant, desiccant herbicides and fungicides.

e. *"Insecticide"* means any substance used to kill insects. Any substance used merely to repel insects is not an insecticide. Mechanical devices which are used to kill insects are not insecticides.

f. *"Livestock."* See subrule 17.9(1) for the definition of this term. In addition, for the purposes of this subrule, the word "livestock" includes domesticated fowl.

g. *"Medication"* is not limited to antibiotics or other drugs administered to livestock.

h. *"Plants"* includes fungi such as mushrooms, crops commonly grown in this state such as corn, soybeans, oats, hay, alfalfa hay, wheat, sorghum, and rye. Also included within the meaning of the term are flowers, small shrubs, and fruit trees. Excluded from the meaning of the term are fir trees raised for Christmas trees and any trees raised to be harvested for their wood.

i. *"Pesticide"* means any substance which is used to kill rodents or smaller vermin, other than insects, such as nematodes, spiders, or bacteria. For the purposes of this subrule, a disinfectant is a pesticide. Excluded from the term "pesticide" is any substance which merely repels pests or any device, such as a rat trap, which kills pests by mechanical action.

j. *"Surfactant"* is a substance which is active on a surface.

The following are examples of taxable and nontaxable sales related to agricultural production for market:

1. The sale of any substance which is not itself an insecticide, herbicide, or pesticide used to make more effective or enhance the function of any insecticide, herbicide, or pesticide is subject to tax prior to April 1, 1990. On and after April 1, 1990, sales of adjuvants, surfactants, and other products which are used to enhance the effectiveness of any insecticide, herbicide, or pesticide used in agricultural production are exempt from tax.

2. The sale of herbicides, pesticides, insecticides, food, medication, drainage tile, and exempt products listed in "1" above to any person not engaged in agricultural production for market is exempt if the property sold will be used for an exempt purpose, e.g., disease control, on behalf of another person engaged in agricultural production for market.

17.9(4) The sale of fuel used to provide heat or cooling for livestock buildings is exempt from tax. For the purposes of this subrule, electricity is considered to be a "fuel," and the term "livestock" includes domesticated fowl. If a building is used partially for housing livestock and partially for a nonexempt purpose, for any portions of the building which are heated or cooled, a proportional exemption from sales tax may be claimed based upon a percentage calculated from a fraction, the numerator of which is the number of square feet of the building heated or cooled and used for housing livestock, and the denominator of which is the number of square feet heated or cooled in the entire building.

17.9(5) On and after July 1, 1995, sales of fuel for heating or cooling greenhouses, buildings, or parts of buildings used for the production of flowering, ornamental, or vegetable plants intended for sale in the ordinary course of business are exempt from tax. See subrule 17.9(4) above for the formula for calculating exempt use if a building is only partly used for plant raising.

17.9(6) On and after July 1, 1997, sales of tangible personal property for use as a fuel in the raising of agricultural products by aquaculture are exempt from tax.

17.9(7) Fuel, gas, electricity, water and heat consumed in implements of husbandry.

a. An implement of husbandry is defined to mean any tool, equipment, or machine necessary to the carrying on of the business of agricultural production and without which that work could not be done. *Reaves v. State,* 50 S.W.2d 286 (Tex. Crim. App. Ct. 1932). An airplane or helicopter designed for and used primarily in spraying or dusting of plants which are raised as part of agricultural production for market is an implement of husbandry.

b. Treatment of fuel used in implements of husbandry prior to July 1, 1985, and subsequent to June 30, 1987. Prior to July 1, 1985, and subsequent to June 30, 1987, the sale of fuel used in any implement of husbandry, whether self-propelled or not, is exempt from tax if consumed while the implement is engaged in agricultural production. Thus, fuel used not only in tractors or combines but also fuel used in implements which cannot move under their own power is exempt from tax. The sale of fuel used in milk coolers and milking machines, stationary irrigation equipment, implements used to handle feed, grain and hay and to provide water for livestock, is exempt from tax even though these implements of husbandry would not, at least ordinarily, be "self-propelled."

c. Sale of fuel used in implements of husbandry on and after July 1, 1985, to and including June 30, 1987. On and after July 1, 1985, to and including June 30, 1987, only the sale of fuel used in "self-propelled" implements was exempt from tax. A "self-propelled" implement of husbandry is one which is capable of movement from one place to another under its own power. An implement of husbandry is not self-propelled simply because it has moving parts. Tractors, combines, and motor trucks used exclusively for delivery and application of fertilizer would be nonexclusive examples of self-propelled implements of husbandry. An irrigation system, which rotates a shaft that dispenses water and a wheel or wheels which support the shaft in a circle about a wellhead which remains stationary, is not a "self-propelled" implement of husbandry.

d. For the purposes of this subrule, electricity used to power an implement of husbandry engaged in agricultural production or consumed in grain drying is considered to be a "fuel."

e. On and after July 1, 1987, the gross receipts from the sale of gas, electricity, water, or heat used in implements of husbandry engaged in agricultural production which is not otherwise exempt under the previous provisions of this subrule, is exempt from tax. See subrule 17.9(3) for the characterization of "Agricultural production" applicable to this subrule.

17.9(8) Water, when sold to farmers who are purchasing water for both livestock production as well as for household and sanitation use, shall be subject to the imposition of the tax the same as electricity or steam in rule 17.3(422,423).

Water sold to farmers and others and used directly as drinking water for livestock or poultry products for market, shall be exempt from the imposition of tax. Water used for other purposes such as household use, sanitation, or swimming pools shall be subject to tax. When water is used in livestock production,

as well as for other purposes, the water may, when practical, be separately metered and separately billed to clearly distinguish the water consumed for livestock purposes from other purposes. When it is impractical to separately meter water which is exempt from that which is taxable, the purchaser may furnish a statement to the seller which will enable the seller to determine the percentage of water subject to the exemption. In the absence of proof to the contrary, the retailer of the water shall bill and collect tax on the first 4,000 gallons of water per month. The first 4,000 gallons of water per month will be considered to be for nonexempt use and the balance will be considered to be used as part of agricultural production.

17.9(9) Refunds regarding farm deer and bison. Effective March 6, 2002, and retroactive to April 1, 1995, refunds of tax, penalty or interest may be claimed for sale of feed and feed supplements and additives when used for consumption by farm deer or bison. To be eligible for refund, the sale must have occurred between April 1, 1995, and March 6, 2002, and the refund claim must be filed prior to October 1, 2002. Refund claims are limited to $50,000 in aggregate and will not be allowed if not timely filed. If the amount of claims totals more than $50,000 in aggregate, the department will prorate the $50,000 among all the claimants in relation to the amounts of the claimants' valid claims.

This rule is intended to implement Iowa Code sections 422.42, 422.43, and 423.1 and 2003 Iowa Acts, chapter 149, sections 1 and 4.

701—17.10(422,423) Materials used for seed inoculations. All forms of inoculation, whether for promotion of better growth and healthier plants or for prevention or cure of mildew of plants or disease of seeds and bulbs, are intended for the same general purpose. Sales tax shall not be imposed on any material used for inoculation.

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

701—17.11(422,423) Educational institution. Goods, wares or merchandise purchased by any private nonprofit educational institution in the state and used for educational purposes shall be exempt from sales tax. The gross receipts from the sale of textbooks and hot lunches to students shall be exempt from sales tax to the extent the profits from the sales are used for educational purposes. The sales of the yearbooks to schools which have executed contracts with yearbook companies to purchase yearbooks are considered sales for resale and are exempt from tax. The sales of yearbooks from the school to the students and others are considered an educational activity and are exempt to the extent the profits therefrom are expended for educational purposes.

Effective January 1, 2002, "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.

EXAMPLE 1: ABC Child Care (ABC) is a private nonprofit organization that provides the service of caring for children newborn to six years of age. In addition, ABC teaches the children basic learning skills such as shapes, numbers, colors, and the alphabet. ABC teaches the same skills every year using the same techniques. ABC is not a private educational institution. ABC's primary purpose is to provide child care. The education of the children is a secondary activity. Consequently, ABC would not qualify for exemption from sales tax.

EXAMPLE 2: Little People's Preschool is a nonprofit private organization that teaches children from the ages of three to six years old. Little People's Preschool teaches the children basic learning skills such as shapes, numbers, colors and the alphabet by using certified faculty and accredited curriculum. Little People's Preschool is a private nonprofit educational institution and is eligible to claim the exemption.

When purchases are made by any private nonprofit educational institution and the institution is acting as an agent for the sale to any student or other person, the sales are taxable if the proceeds from the sale are not used for educational purposes.

When private nonprofit educational institutions contract with food service companies to make sales of food or other sales at the educational institution, certain sales by the food service company are taxable or exempt depending on the circumstances.

Taxable Sales

A. All cash sales of meals or foods that could not be purchased in the same form or quantity in a retail store accepting food coupons (see rule 701—20.1(422,423) to 20.6(422,423)), shall be taxable whether sold at snack bars, grills, cafeterias, restaurants, or cafes and whether or not sold to students.

B. All vending machine sales without exception.

C. Special event billings to colleges for feeding of guests not connected with the college.

D. Special event billings to colleges for feeding at banquets, parties, or social events not connected with the college.

E. Cash sales of any function where collection is made direct, whether or not to students.

F. Sales to fraternities or sororities for parties, banquets or social events not billed to college.

G. Special event feedings of commercial or social clubs such as chambers of commerce, Rotarians, Kiwanis, alumni, advertising clubs, or political groups, even though billed through the college.

Exempt Sales

A. Student board billing to include freshman days and student orientation when billed to the college and included in tuition.

B. Students and faculty casual board when billed to college.

C. Teas, conferences, and parties when given by faculty for students and billed to the college.

D. Athletic or training table feeding when billed to the college.

E. Special events sponsored by colleges for visiting dignitaries, or functions related to education and billed to the college.

F. Picnics for students on education field trips and billed to the college.

The above examples are not all-inclusive, only a general guideline.

A private nonprofit educational institution consists of a school, college, or university with students, faculty, and an established curriculum, a group of qualifying organizations acting in concert, or libraries.

This rule is intended to implement Iowa Code sections 422.42, 422.43, 422.45(3) as amended by 2001 Iowa Acts, House File 736, section 2, 422.45(7), 422.45(8) as amended by 2001 Iowa Acts, House File 736, section 3, 423.1, and 423.4.

701—17.12(422) Coat or hat checkrooms. The operation of a checkroom is not a taxable service or an admission to any amusement or athletic event; therefore, the gross receipts from this operation shall not be included in the gross receipts on which sales tax is computed.

This rule is intended to implement Iowa Code section 422.43.

701—17.13(422,423) Railroad rolling stock. Railroad rolling stock is that portion of railroad property which is incapable of being affixed or annexed on any one place but is wholly intended for movement on rails to transport persons or property whether for hire or not for hire and includes materials and parts used therefor. Locomotives, railroad cars, and materials and parts used therefor shall be exempt from tax. This exemption includes maintenance-of-way equipment which is used to transport persons or property. Also, fuel and lubricants used in railroad rolling stock are materials used in railroad rolling stock and their sales are exempt from tax. Enumerated services are not railroad rolling stock and are not exempt from tax.

This rule is intended to implement Iowa Code section 422.45(10).

701—17.14(422,423) Chemicals, solvents, sorbents, or reagents used in processing. Chemicals, solvents, sorbents, and reagents directly used and consumed, dissipated, or depleted in processing tangible personal property intended to be sold ultimately at retail shall be exempt from sales and use tax. For the purpose of this rule for periods on or after January 1, 1980, free newspapers or shoppers' guides or both are considered to be retail sales for the purpose of the processing exemption.

17.14(1) *Definitions.*

a. *"Chemical"* is a substance which is primarily used for producing a chemical effect. A chemical effect results from a chemical process wherein the number and kind of atoms in a molecule are changed in form (e.g., where oxygen and hydrogen are combined to make water). A chemical process is distinct from a physical process wherein only the state of matter changes (e.g., where water is frozen into ice or heated into steam).

b. *"Solvent"* is a substance (usually liquid) primarily used in dissolving something; as water is the appropriate solvent of most salts, alcohol of resins, and ether of fats.

c. *"Sorbent"* is a substance which takes up and holds either by adsorption or absorption. To be a sorbent for purpose of the exemption, a substance must be primarily used as a sorbent.

d. *"Reagent"* is a substance used for various purposes, (as in detecting, examining, or measuring other substances, in preparing materials, in developing photographs) because it takes part in one or more chemical reactions or biological processes. A reagent is also a substance used to convert one substance into another by means of the reaction which it causes. To be a reagent for purpose of the exemption, a substance must be primarily used as a reagent.

For the purpose of this rule, a catalyst is considered to be a chemical, solvent, sorbent, or reagent. A catalyst is a substance which promotes or initiates a chemical reaction, and as such is exempt from tax if consumed, dissipated, or depleted during processing of tangible personal property which is intended to be ultimately sold at retail.

17.14(2) *Conditions for exemption.* To qualify for this exemption, all of the following conditions must be met:

a. The item must be a chemical, solvent, sorbent, or reagent.

b. The chemical, solvent, sorbent, or reagent must be directly used and consumed, dissipated, or depleted during processing as defined in rule 701—18.29(422,423).

c. The processing must be performed on tangible personal property intended to be sold ultimately at retail.

d. The chemical, solvent, sorbent, or reagent need not become an integral or component part of the processed tangible personal property.

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

701—17.15(422,423) Demurrage charges. Charges for returning tangible personal property after the agreed-upon date which are true demurrage charges supported by a written agreement do not constitute taxable sales and are exempt from tax.

This rule is intended to implement Iowa Code section 422.43.

701—17.16(422,423) Sale of a draft horse. The gross receipts from the sale of draft horses, when purchased for use and so used as a draft horse, shall not be subject to tax. For the purposes of this rule, horses commonly known as Clydesdale, Belgian, Shire, and Percheron will be considered draft horses. However, upon proper showing, other breeds will be granted the exemption by the director, but the burden of proof lies with the one seeking the exemption. *Jones v. Iowa State Tax Commission,* 74 N.W.2d 563 (Iowa 1956). These breeds are used as a draft horse when they are used to pull a load. It is not required that the load be of a commercial nature. Such horses used to pull loads in shows or for the conveyance of persons or property are being so used as draft horses.

The effective date of this rule is for periods beginning on or after July 1, 1978.

This rule is intended to implement Iowa Code sections 422.45(17) and 423.4(4).

701—17.17(422,423) Beverage container deposits. Tax shall not apply to beverage container deposits. This rule is also applicable to all mandatory beverage container deposits required under the provisions of Iowa Code chapter 455C including deposits on items sold through vending machines.

This rule is intended to implement Iowa Code chapter 455C.

701—17.18(422,423) Films, video tapes and other media, exempt rental and sale.

17.18(1) *Exempt rental.* The gross receipts from the rental of films, video and audio tapes or discs, records, photos, copy, scripts, or other media used for the purpose of transmitting that which can be seen, heard or read shall not be taxable if the lessee either:

a. Imposes a charge for the viewing or rental of the media and that charge will be subject to Iowa sales or use tax, or

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

The gross receipts from lessees who are film exhibitors or who rent video tapes and discs would ordinarily be exempt from tax under this rule. The rental of media for reproduction of images into newspapers or periodicals will not be exempt from tax under this rule since neither of criteria *"a"* or *"b"* above will occur. The rental of films, video tapes and video discs for home viewing is not exempt from tax.

17.18(2) *Exempt sale.* Retroactive to July 1, 1984, gross receipts from the sale to persons regularly engaged in the business of leasing or renting media of motion picture films, video and audio tapes or discs, and records, or any other media which can be seen, heard, or read are exempt from tax if the ultimate leasing or renting of the media is subject to Iowa sales or use tax.

This rule is intended to implement Iowa Code sections 422.45(24) and 422.45(41).

701—17.19(422,423) Gross receipts from the sale or rental of tangible personal property or from services performed, rendered, or furnished to certain nonprofit corporations exempt from tax.

17.19(1) On and after July 1, 1988, the gross receipts from the sale or rental of tangible personal property or from services performed, rendered, or furnished to the following nonprofit corporations are exempt from tax.

a. Community health centers as defined in 42 U.S.C.A. Section 254c.

b. Migrant health centers as defined in 42 U.S.C.A. Section 254b.

17.19(2) After July 1, 1985, the gross receipts from the sale or rental of tangible personal property or from services performed, rendered or furnished to the following nonprofit corporations are exempt from tax.

a. Residential care facilities and intermediate care facilities for the mentally retarded and residential care facilities for the mentally ill licensed by the department of health under Iowa Code chapter 135C.

b. Residential facilities for mentally retarded children licensed by the department of human services under Iowa Code chapter 237 including facilities maintained by "individuals" as defined in section 237.1(7) until and including June 30, 1989. On and after July 1, 1989, all residential facilities for child foster care (not only those for mentally retarded children) licensed by the department of human services under chapter 237, other than those maintained by "individuals" as defined in Iowa Code section 237.1(7) are eligible for the exemption.

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 mentally retarded and other developmentally disabled persons and adult day care services approved for reimbursement by the department of human services.

d. Community mental health centers accredited by the department of human services under Iowa Code chapter 225C.

17.19(3) The exemption does not apply to tax paid on the purchase of building materials by a contractor which are used in the construction, remodeling or reconditioning of a facility used or to be used for one or more of the uses set forth in subrule 17.19(2). See 1985 O.A.G. 66.

17.19(4) Taxes payable on transactions occurring between July 1, 1980, and July 1, 1985, involving the retail sale or rental of tangible personal property or from services performed, rendered, or furnished to a nonprofit corporation described in subrule 17.19(2) and which have not been paid by the nonprofit corporation are no longer due and payable after July 1, 1985, and these taxes are not to be collected notwithstanding any other provisions of the Code.

This rule is intended to implement Iowa Code section 422.45.

701—17.20(422) Raffles. Gross receipts from the sale of fair raffle tickets pursuant to Iowa Code section 99B.5 are not subject to tax.

This rule is intended to implement Iowa Code section 422.45(32).

701—17.21(422) Exempt sales of prizes. For sales occurring on and after July 1, 1987, the gross receipts from sales 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 and lawful under Iowa Code chapter 99B are exempt from tax. See Chapters 481—100 through 104 of Inspections and Appeals, Iowa Administrative Code, for a description of the games of skill, games of chance, raffles, and bingo games which are lawful. See rule 481—100.6(99B) for a description of the prizes which it is lawful to award. A gift certificate is not tangible personal property. If a person wins a gift certificate as a prize at the time the person redeems the gift certificate for merchandise, on and after July 1, 1987, tax remains payable at the time the gift certificate is redeemed. See rule 701—15.16(422).

This rule is intended to implement Iowa Code section 422.45(32).

701—17.22(422,423) Modular homes. On and after July 1, 1988, 40 percent of the gross receipts from the sale of a modular home is exempt from tax. A "modular home" is any structure, built in a factory, made to be used as a place for human habitation which cannot be attached or towed behind a motor vehicle and which does not have permanently attached to its body or frame any wheels or axles.

This rule is intended to implement Iowa Code section 422.45.

701—17.23(422,423) Sales to other states and their political subdivisions. On and after July 1, 1990, gross receipts from the sale of tangible personal property or from the furnishing of electrical energy, natural or artificial gas, or communication service to another state or political subdivision of another state are exempt from tax if that other state provides a similar reciprocal exemption for Iowa and its political subdivisions. The states known to provide a similar reciprocal exemption to Iowa and its subdivisions (as of October 1, 1998) are Illinois, Kentucky, North Dakota, South Dakota, and the District of Columbia.

This rule is intended to implement Iowa Code section 422.45.

701—17.24(422) Nonprofit private museums. For sales occurring on or after July 1, 1990, the gross receipts of all sales of goods, wares, merchandise, or services used for educational, scientific, historic preservation, or aesthetic purpose to a nonprofit private museum are exempt from tax. A "museum" is an institution organized for educational, scientific, historical preservation, or aesthetic purposes which is predominately devoted to the care and exhibition of a collection of objects in a room, building, or locale. This collection must be open to the public on a regular basis, and its staff must be available to answer questions regarding the collection. See the example at the end of the rule for a characterization of the phrase "open to the public on a regular basis."

Words contained in exemption statutes are strictly construed; all doubt regarding their meaning is resolved in favor of taxation and against exemption. *Ballstadt v. Iowa Department of Revenue*, 368 N.W.2d 147 (Iowa 1985) and *Iowa Movers and Warehousemen's Association v. Briggs*, 237 N.W.2d 759 (Iowa 1976). Furthermore, an institution is not a "museum" unless it can be included in the "ordinary and usual public concept" of a museum, regardless of the abstract definition of the term within which the institution might fit. See *Sorg v. Department of Revenue*, 269 N.W.2d 129 (Iowa 1978). Using the above principles, the department excludes from its definition of "museum" the following: aquariums, arboretums, botanical gardens, nature centers, planetariums, and zoos. Included within the meaning of "museum" are: art galleries, historical museums, museums of natural history, and museums devoted to one particular subject or one person.

EXAMPLE: The Blank County History Museum is open every Tuesday afternoon from 1 p.m. to 4:30 p.m., other than on national holidays. The museum is open periodically or at fixed intervals, so it is open "on a regular basis," even though, each week, it is open only briefly.

This rule is intended to implement Iowa Code section 422.45(43).

701—17.25(422,423) Exempt sales by excursion boat licensees. The following sales by licensees authorized to operate excursion gambling boats are exempt from Iowa sales and use tax: (1) charges for admission to excursion gambling boats, and (2) gross receipts from gambling games authorized by the state racing and gaming commission and conducted on excursion gambling boats.

Gross receipts from charges other than those for admissions or authorized gambling games would ordinarily be taxable. The following is a nonexclusive list of taxable licensee sales: parking fees, sales of souvenirs, vending machine sales, prepared meals, liquor and other beverage sales, and gross receipts from nongambling video games and other types of games which do not involve gambling.

This rule is intended to implement Iowa Code section 99F.10(6).

701—17.26(422,423) Bedding for agricultural livestock or fowl. See subrules 17.9(1) and 17.9(2) and paragraph 17.9(3)*"a"* for definitions applicable to this rule. Between July 1, 1985, and June 30, 1992, inclusive, only the sale of woodchips or sawdust used in the production of agricultural livestock or fowl was exempt from tax. The sale of other materials used as bedding in the production of agricultural livestock or fowl was not exempt from tax. On and after July 1, 1992, the gross receipts from the sale of not only woodchips or sawdust but also of hay, straw, paper or any other materials used for bedding in the production of agricultural livestock or fowl is exempt from tax.

This rule is intended to implement Iowa Code section 422.45(30).

701—17.27(422,423) Statewide notification center service exemption. On and after January 1, 1995, taxable services rendered, furnished or performed by a statewide notification center established under Iowa Code section 480.3 which provides notice to operators of underground facilities who excavate in the area of these facilities are exempt from tax. This exemption is also applicable to taxable services rendered, furnished, or performed by any vendor selected by the board of directors of the statewide notification center to provide notification services.

This rule is intended to implement Iowa Code section 422.45 as amended by 1995 Iowa Acts, House File 550.

701—17.28(422,423) State fair and fair societies. For periods beginning on or after July 1, 1996, the gross receipts from sales or services rendered, furnished, or performed by the state fair organized under Iowa Code chapter 173 or a county, district or fair society organized under Iowa Code chapter 174 are exempt from sales tax. This exemption does not apply to individuals, entities, or others that sell or provide services at the state, county, district fair, or fair societies organized under Iowa Code chapters 173 and 174. See 701—subrule 16.26(2) for examples of this rule's application.

This rule is intended to implement Iowa Code section 422.45 as amended by 1996 Iowa Acts, chapter 1124.

701—17.29(422,423) Reciprocal shipment of wines. A winery licensed or permitted pursuant to laws regulating alcoholic beverages in a state which affords this state an equal reciprocal shipping privilege may ship into this state by private common carrier, to a person 21 years or age or older, not more than 18 liters of wine per month, for consumption or use by such person. Such wine shall not be resold. Shipment of wine pursuant to this rule is not subject to sales tax under Iowa Code section 422.43 or use tax under Iowa Code section 423.2.

"Equal reciprocal shipping privilege" means allowing wineries located in this state to ship wine into another state, not for resale, but for consumption or use by a person 21 years of age or older.

This rule is intended to implement Iowa Code section 123.187 as enacted by 1996 Iowa Acts, chapter 1101.

701—17.30(422,423) Nonprofit organ procurement organizations. On and after July 1, 1998, the gross receipts from sales of tangible personal property to, or from services rendered, furnished, or performed for, a statewide, nonprofit organ procurement organization are exempt from tax.

An "organ procurement organization" is an organization which performs or coordinates the activities of retrieving, preserving, or transplanting organs, which maintains a system of locating prospective

recipients for available organs, and which is registered with the United Network for Organ Sharing and designated by the United States Secretary of Health and Human Services pursuant to 42 CFR § 485, subpt. D.

This rule is intended to implement Iowa Code section 422.45 as amended by 1998 Iowa Acts, chapter 1156.

701—17.31(422,423) Sale of electricity to water companies. On or after July 1, 1998, the gross receipts from the sale of electricity to water companies assessed for property tax pursuant to Iowa Code sections 428.24, 428.26, and 428.28, which is used solely for the purpose of pumping water from a river or well is exempt from sales tax. For the purposes of this rule, "river" means a natural body of water or waterway that is commonly known as a river. "Well," for the purposes of this rule, means an issue of water from the earth; a mineral spring; a pit or hole sunk into the earth to reach a water supply; a shaft or hole sunk to obtain oil, water, gas, etc.; a shaft or excavation in the earth, in mining, from which run branches...*Pacific Gas and Electric Company v. Hufford,* 319 P.2d 1033, 1040 (Calif. 1957), citing Webster's New International Dictionary, 2nd ed., unabridged. Also see rule 701—17.3(422,423) for additional information regarding the processing exemption.

This rule is intended to implement Iowa Code section 422.45 as amended by 1998 Iowa Acts, chapter 1161.

701—17.32(422) Food and beverages sold by certain organizations are exempt. Retroactively to July 1, 1988, the gross receipts from sales of food and beverages for human consumption by certain organizations that promote Iowa products and any other food or beverage sold in conjunction with the promoted Iowa product by the organization.

17.32(1) To claim the exemption, an organization must meet all of the following qualifications:

a. The organization must be nonprofit,

b. The organization must principally promote a food or beverage product for human consumption that is produced, grown, or raised in Iowa, and

c. The organization must be exempt from federal income tax under Section 501(c) of the Internal Revenue Code.

17.32(2) Claim for refunds of tax, interest, or penalty paid for the period of July 1, 1988, to June 30, 1998, must be limited to $25,000 in the aggregate and will not be allowed unless filed prior to October 1, 1998. If the amount of the claimed refunds for this period totals more than $25,000, the department must prorate the $25,000 among all claims. In addition, refunds of tax, interest, or penalty paid will only be refunded to the organization that actually paid the tax and did not collect the tax from the customer for the period in which the refund is requested or to an individual that paid the tax during the authorized period and had a receipt of the transaction.

EXAMPLE 1. A nonprofit association that is also exempt from federal income tax under Section 501(c) of the Internal Revenue Code promotes the sale of turkey. In October of 1997, in Winterset, Iowa, the organization sold turkey sandwiches, chips, and beverages to patrons of a festival encouraging the touring and preservation of its historic covered bridges. The association did not separately charge sales tax to the customers for the food purchased. Instead, the association remitted the sales tax on the gross receipts from the event from its own funds. The gross receipts from the sales of the turkey sandwiches would be exempt from sales tax. The association would be entitled to submit a request for refund of the tax paid on the gross receipts from the selling event by October 1, 1998.

EXAMPLE 2. A local nonprofit organization that is exempt from federal income tax under Section 501(c) of the Internal Revenue Code promotes the sale of Iowa corn. On May 8, 1998, during a festival promoting Pella, Iowa's beautiful tulips and heritage, the association sold Iowa sweet corn on an "all you can eat" basis for one price to patrons of the festival. The organization charged its customers tax in addition to the price charged. The organization would not qualify to claim a refund for the sales tax paid on the gross receipts from the festival due to the organization's not paying the sales tax from its own funds for the May 8, 1998, event. Instead, the organization collected the tax from its customers and remitted the tax to the department. However, a customer of the organization would be entitled to a refund

if the customer can produce a receipt of the transaction indicating the tax was paid by the customer for the period at issue.

This rule is intended to implement Iowa Code section 422.45 as amended by 1998 Iowa Acts, chapter 1091.

701—17.33(422,423) Sales of building materials, supplies and equipment to not-for-profit rural water districts. Retroactive to July 1, 1998, sales of building materials, supplies, and equipment to not-for-profit rural water districts (those organized under Iowa Code chapter 504A and as provided by Iowa Code chapter 357A), which are used by the districts for the construction of their facilities, are exempt from tax. See rule 701—19.3(422,423) for definitions of the terms "building materials," "building supplies," and "building equipment" which are applicable to this rule. Additionally, for the purposes of this rule, cranes, underground boring machines, water main pulling equipment, and similar machinery used by a rural water district for the construction of its facilities are "building equipment." This rule does not exempt rentals of building equipment from tax, but a rural water district's rentals of building equipment may be exempt from tax if the rental is on or in connection with new construction, alteration, reconstruction, remodeling, or expansion of real property or a structure. See rule 701—19.13(422,423).

This rule is intended to implement Iowa Code section 422.45 as amended by 1999 Iowa Acts, chapter 59.

701—17.34(422,423) Sales to hospices. As of July 1, 1999, gross receipts from the sale or rental of tangible personal property to or the performance of services for any freestanding nonprofit hospice facility which operates a hospice program are exempt from tax if the property or service is purchased for use in the hospice's program. A "hospice program" is any program operated by a public agency, a private organization, or a subdivision of either, which is primarily engaged in providing care to terminally ill individuals. A "freestanding hospice facility" is any hospice program housed in a building which is dedicated only to the hospice program and which is not attached to any other building or complex of buildings. An individual is "terminally ill" if that individual has a medical prognosis that the individual's life expectancy is six months or less if the illness runs its normal course.

This rule is intended to implement Iowa Code section 422.45 as amended by 1999 Iowa Acts, chapter 62.

701—17.35(422,423) Sales of livestock ear tags. On and after July 1, 2000, sales of livestock ear tags by a nonprofit organization, the income of which is exempt from federal taxation under Section 501(c)(6) of the Internal Revenue Code, are exempt from tax if the proceeds of those sales are used in bovine research programs selected or approved by the nonprofit organization. For the purposes of this rule, the definition of "livestock" is found in subrule 17.9(1).

This rule is intended to implement Iowa Code Supplement section 422.45 as amended by 2000 Iowa Acts, chapter 1169.

701—17.36(422,423) Sale or rental of information services. Effective May 15, 2000, and retroactive to March 15, 1995, the gross receipts from the service of the sale or rental of information services are exempt from tax. This exemption does not repeal by implication the tax on the performance of the services of investment counseling, of all financial institutions, private employment agencies, test laboratories, detective services, or any other services enumerated by statute. They remain taxable; see 701—Chapter 26, generally.

"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 particular buyer (or its agent) of the information through any tangible or intangible medium. Information accumulated, prepared, or organized for a particular buyer, its agent, a group of buyers, or their agent, is an information service even though it may incorporate preexisting components of data or other information.

Information services include, but are 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, scouting reports, white and yellow page listings, and other similar items of compiled information prepared for a particular customer. The furnishing of artwork (including musical compositions and films), drawings, illustrations, or other graphic material is not the performance of an "information service"; nor does the term include information prepared for general dissemination to the public in the form of books, magazines, newsletters, video or audio tapes, compact disks, or any other medium commonly used to communicate with large numbers of customers. The sale of a book, magazine, or similar item is not the sale of an information service, even if the item contains material of practical use (e.g., in conducting a private, for-profit business) to its purchaser.

The following specific examples illustrate the general principles set out above.

EXAMPLE A. John Doe buys a packaged set of preprinted documents and instructions which anyone may purchase and which is entitled "Legal Eagle." Mr. Doe prepares his own will by reading the instructions, making choices and filling in the blanks on the preprinted documents. Mr. Doe has purchased tangible personal property and not an information service. His purchase is taxable.

EXAMPLE B. A taxpayer buys a book entitled "Doing Your Own Iowa Individual Income Tax," which is written by an accountant and is available to any buyer. The taxpayer uses the book to prepare her own IA 1040. Since her purchase contains information prepared for general dissemination to the public in the form of a book, that purchase is a taxable sale of tangible personal property and not an exempt sale of an information service.

EXAMPLE C. The seller provides, for a fee, a weekly bulletin listing information on real estate of use to brokers selling homes in a certain Iowa county. The seller secures the information from a multiple listing service without applying any independent thought during the compiling of that information. The bulletin is useful only to those brokers and not to the general public. Since the bulletin is a "real estate listing" and has been prepared for a particular group of customers and not for the general public, its sale is the sale of an information service rather than the sale of tangible personal property and is thus exempt from tax.

EXAMPLE D. A-1 Corporation sells gourmet meats through the mail. A-1 rents its list of customers to whom it mails its catalog to other retailers who specialize in sales of goods or services to the wealthy. Since the list is a "mailing list" and made available only to a particular group of buyers, its rental is the performance of an exempt information service and not the taxable rental of tangible personal property.

EXAMPLE E. Company E is a tariff bureau which specializes in compiling and preparing tariff schedules. E acquires these schedules from various companies throughout the country. E then provides these schedules to common carriers who subscribe to its service. Its printed tariff schedules are published in bound and loose-leaf form; they may be updated daily. E's providing the schedules is the performance of an exempt information service because the schedules are compiled for a particular group of customers and they are items of compiled information similar to the files, lists, reports, and other information services named above.

EXAMPLE F. Company F compiles and prints telephone directories. F purchases white and yellow page listings from various telephone companies and uses those listings to make up its directories. F's purchases of the white and yellow page listings are purchases of an exempt information service. Any sales on F's part of the directories to the general public would be sales of tangible personal property subject to tax.

EXAMPLE G. Company G purchases the assets of four businesses. The primary asset of each of the businesses is a database containing names, addresses, and other customer information of use to G but not to anyone other than a company similar to G. G transfers the lists to its own computers by way of paper or magnetic tape. G has purchased an exempt information service with its purchases of the four databases.

This rule is intended to implement Iowa Code Supplement section 422.45 as amended by 2000 Iowa Acts, chapter 1195, section 3.

701—17.37(422,423) Temporary exemption from sales tax on certain utilities. Effective February 5, 2001, the sales of specific energy sources are exempt from Iowa sales tax. Specified sales of energy are exempt from local option taxes as well; see rule 701—107.9(422B).

This exemption is not applicable to electricity, regardless of whether the electricity is used for heat. Electricity charges on utility bills will continue to be subject to Iowa sales and local option taxes. This exemption does not impact franchise fees. Franchise fees will continue to be imposed where applicable.

17.37(1) *Definitions.* The following definitions are applicable to this rule:

"Fuel" means a liquid source of energy for a residential dwelling, individual apartment unit, or condominium. "Fuel" includes propane, heating fuel, and kerosene. However, "fuel" does not include blended kerosene used as motor fuel or special fuel.

"Heat" means to increase or maintain the temperature of a residential dwelling, apartment unit, or condominium. Due to metered gases and fuels being used for other purposes in the dwelling, such as clothes dryers, gas stoves, and hot water heaters, this temporary exemption for metered gas used for heating purposes will also be extended to metered gases and fuels used for appliances in the residential dwelling, individually metered apartment unit, or individually metered condominium.

"Metered gas" means natural gas that is billed based on metered usage to provide energy to a residential dwelling, individually metered apartment unit, or individually metered condominium.

"Residential dwelling" means a structure used exclusively for human occupancy. This does not include commercial or agricultural structures, nor does it include nonresidential buildings attached to or detached from a residential dwelling, such as a detached garage or outbuilding. However, a garage attached to the residential dwelling that is used strictly for residential purposes will fall within the exemption. Also excluded from this exemption are classified commercial facilities. Classified commercial facilities include, but are not limited to, nursing homes, adult living facilities, assisted living facilities, halfway houses, charitable residential facilities, YMCA residential facilities, YWCA residential facilities, apartment units not individually metered, and group homes.

17.37(2) *Metered gas exemption.* Effective February 5, 2001, the gross receipts from the sale, furnishing or service of metered gas for residential customers which is used to provide energy to residential dwellings, individually metered apartment units, and individually metered condominiums, and that has a billing date of March 2001 or April 2001, are exempt from sales tax.

a. Billing date determinative. The determining factor for exemption for metered gas is the billing date for the metered gas. The exemption applies only to bills for metered gas which are dated in March 2001 or April 2001.

If a billing for the same usage period needs to be billed more than once due to loss of the original bill or some other error, the billing date of the original bill controls qualification for exemption of metered gas. For example, a utility company issues a billing for metered gas on January 8, 2001, and customer A loses the billing. Customer A calls the utility company in late February and requests that a new billing be issued. The utility company issues a replacement billing to customer A and the replacement bill has a date of March 3, 2001. The date of the original billing issued to customer A is determinative for the purpose of qualifying for the exemption. The fact that a previously taxable billing was reissued during an exemption period does not qualify the reissued billing for the exemption.

b. Qualifying usage. All metered gas billed to a residential customer during March 2001 and April 2001, which will be used as energy for a residential dwelling, individually metered apartment unit, or individually metered condominium as defined in this rule, qualifies for exemption. This exemption includes metered gas used to operate heating units, appliances, and hot water heaters.

c. Qualifying structures. Structures that include both residential and commercial usage on the same meter are subject to a proration formula to obtain the qualifying portion eligible for exemption. To qualify for proration, the structure must be used for both commercial and residential purposes. The purchaser must furnish an exemption certificate to the supplier with respect to that percentage of metered gas that is eligible for exemption. See 701—subrule 15.3(2). The exemption certificate must be in writing and detail how the percentages of exempt residential usage and taxable nonresidential usage were developed. For example, a gift shop, Miss Barb's Bangles and Baubles, is located on the town square of Indianola, Iowa. Above the gift shop is an apartment. The gas usage of the apartment and

the gift shop are monitored by one gas meter. The metered gas usage for the apartment is exempt, but usage for the gift shop is not. As a result, a proration formula must be established to separately reflect the metered gas usage of the apartment and the gift shop. In addition, the occupant of the apartment must provide an exemption certificate to the metered gas utility company to request the exemption. Approved exemption certificates are available upon request from the department.

It is important to note that the exemption for metered gas is limited to metered gas provided to residential customers. Consequently, a building containing apartment units is not considered to be residential. Instead, if it is classified as commercial property for property tax or any other purpose it is not eligible for exemption unless each apartment has a separate meter to monitor usage.

d. Credit. A utility company that sells, furnishes or services metered gas to residential customers may bill customers sales tax even if the customer qualifies for the exemption from sales tax under this subrule in March and April 2001 if the utility company cannot adjust its billing process in time to accommodate this exemption. Subsequently, the utility company must provide a credit for tax collected from a qualifying utility customer during the exemption period and the credit is to appear on the first possible billing date after March 31, 2001.

17.37(3) *Fuel exemption.* Effective February 5, 2001, through March 31, 2001, the gross receipts from the sale, furnishing, or service of fuel used to heat a residential dwelling, apartment unit, or condominium is exempt from sales tax.

a. Qualifying fuel. Any fuel which is used to provide heat for a residential dwelling, apartment unit, or condominium, as defined for the purposes of this rule, is exempt from tax. The fuel must be used to heat the residential dwelling, apartment unit, or condominium.

b. Delivery date determinative. The determining factor for exemption from sales tax is the delivery date of the fuel. Payment date, billing date, or date of execution of the contract for fuel is not a factor. Prices established by contracts executed to establish a fixed price for fuel are not impacted by this exemption. The exemption for fuel applies to the furnishing of the fuel and the delivery service. Only fuel delivered in the time frame beginning February 5, 2001, through March 31, 2001, is exempt.

Consequently, contracts executed to establish a fixed price for fuel, which may also include total or partial prepayment for the fuel under the contract, are exempt only for the amount of fuel delivered beginning February 5, 2001, through March 31, 2001. For example, in September 2000, customer A executed a contract with a propane retailer for fuel which will be delivered in January, February, March and April of 2001. Customer A pays $1,000 of the contract price to the retailer. Customer A cannot claim exemption for the entire $1,000 previously paid. Instead, customer A may only receive exemption on the $525 in gross receipts in fuel delivered under the contract from February 5, 2001, through March 31, 2001.

This rule is intended to implement Iowa Code section 422.45 as amended by 2001 Iowa Acts, House File 1.

701—17.38(422,423) State sales tax phase-out on energies. Beginning January 1, 2002, the state sales tax is phased out at the rate of 1 percent per year on the gross receipts from the sale, furnishing, or service of metered natural gas, electricity and fuels, including propane and heating oils, to residential customers for use as energy for residential dwellings, apartment units, and condominiums for human occupancy.

Local option taxes are not included in the phase-out of the state sales tax.

This phase-out of tax does not impact franchise fees. Franchise fees will continue to be imposed where applicable.

17.38(1) *Definitions.* The following definitions are applicable to this rule:

"Energy" means a substance that generates power to operate fixtures or appliances within a residential dwelling or that creates heat or cooling within a residential dwelling.

"Fuel" means a liquid source of energy for a residential dwelling, individual apartment unit, or condominium. "Fuel" includes propane, heating fuel, and kerosene. However, "fuel" does not include blended kerosene used as motor fuel or special fuel.

"Metered gas" means natural gas that is billed based on metered usage to provide energy to a residential dwelling, individual apartment unit, or individual condominium.

"Residential dwelling" means a structure used exclusively for human occupancy. This does not include commercial or agricultural structures, nor does it include nonresidential buildings attached to or detached from a residential dwelling, such as an outbuilding. However, a garage attached to or detached from a residential dwelling and that is used strictly for residential purposes will fall within the phase-out provisions. A building containing apartment units is not considered to be qualifying property for purposes of this rule. However, if each apartment has a separate meter, it may qualify for the phase-out if classified as qualifying property by the utility. Also excluded from the phase-out provisions are certain nonqualifying properties that include, but are not limited to, nursing homes, adult living facilities, assisted living facilities, halfway houses, charitable residential facilities, YMCA residential facilities, YWCA residential facilities, apartment units not individually metered, and group homes.

17.38(2) *Schedule for phase-out of tax.* State sales tax will be phased out at the rate of 1 percent per year based on the following schedule:

a. If the date of the utility billing or meter reading cycle of the residential customer for the sale, furnishing, or service of metered gas and electricity is on or after January 1, 2002, through December 31, 2002, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occur on or after January 1, 2002, through December 31, 2002, the rate of state tax is 4 percent of the gross receipts.

b. If the date of the utility billing or meter reading cycle of the residential customer for the sale, furnishing, or service of metered gas and electricity is on or after January 1, 2003, through December 31, 2003, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occur on or after January 1, 2003, through December 31, 2003, the rate of state tax is 3 percent of the gross receipts.

c. If the date of the utility billing or meter reading cycle of the residential customer for the sale, furnishing, or service of metered gas and electricity is on or after January 1, 2004, through December 31, 2004, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occur on or after January 1, 2004, through December 31, 2004, the rate of state tax is 2 percent of the gross receipts.

d. If the date of the utility billing or meter reading cycle of the residential customer for the sale, furnishing, or service of metered gas and electricity is on or after January 1, 2005, through December 31, 2005, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occur on or after January 1, 2005, through December 31, 2005, the rate of state tax is 1 percent of the gross receipts.

e. If the date of the utility billing or meter reading cycle of the residential customer for the sale, furnishing, or service 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 occur on or after January 1, 2006, the rate of state tax is 0 percent of the gross receipts.

17.38(3) *Determination of tax rate.* Determination of the rate of state tax to be imposed on a transaction depends on the type of energy that is being purchased.

a. *Electricity or metered natural gas.* If the energy being purchased is either electricity or natural gas, then the rate of tax is governed by either the billing date or meter reading date. For example, ABC natural gas company sends out bills with a billing date of December 31, 2002, to qualifying residential customers. However, the bills to these qualifying customers are not placed in the United States mail until January 2, 2003. Based on the foregoing facts, the state sales tax to be imposed on the bills is 4 percent. Four percent is the tax rate imposed at the time of the billing date on the gas bills sent to the customers.

If a billing for the same usage period needs to be billed more than once due to loss of the original bill or some other error, the billing date of the original bill controls qualification for the phase-out provisions of metered gas or electricity. For example, a utility company issues a billing for metered gas on December 28, 2001, to a customer and the customer loses the billing. The customer calls the utility company on January 10, 2002, to report the lost billing and to request a new billing. The utility company issues a new billing with a billing date of January 12, 2002, to the customer. The original billing date issued to the customer is determinative for the tax rate to be imposed. As a result, a 5 percent state tax rate should be imposed on the billing because the original billing date was prior to January 1, 2002.

b. Fuel and heating oil. The proper rate of tax to be imposed for the sale, furnishing or service of fuel including propane is governed by the date of delivery of the fuel to the customer. Consequently, if a farmer purchases propane for home heating by executing and paying for the propane in October 2002 but the propane is not delivered to the farmer until January 2003, the rate of state sales tax that should be imposed on the transaction is 3 percent.

17.38(4) *Qualifying and nonqualifying usage.* Customers that have both qualifying and nonqualifying usage on the same meter or fuel tank are subject to a proration formula to obtain the qualifying portion eligible for the phase-out provisions. In these situations the percentage of qualifying usage must be determined by the purchaser for the purposes of applying the phase-out tax. Nonqualifying usage would be subject to the full state tax rate. Consequently, a proration of the metered gas, electricity or fuel usage for the qualifying and the nonqualifying usage must be calculated by the purchaser. See 701—subrules 15.3(4) and 15.3(5) for guidance on proration of electricity, natural gas and fuels. In addition, the purchaser must furnish an exemption certificate to the supplier with respect to that percentage of metered gas or electricity that is eligible for the phase-out provisions. See 701—subrule 15.3(2). The customer may provide a calculation which includes only the usage not subject to phase-out.

The customer must notify the utility provider of the percentage of qualifying and nonqualifying usage and the customer has the burden of proof regarding the percentage. The customer is liable for any mistakes or misrepresentations made regarding the computation or for failure to notify the utility provider in writing of the percentage of qualifying or nonqualifying usage.

Security lights used by customers that are billed as a flat rate tariff will be subject to the phase-out if the customer is classified as a residential customer. However, if a customer uses security lights which are billed as a flat rate tariff and that customer is classified as a commercial customer, the gross receipts including the usage of the security lights are not subject to the phase-out of state sales tax and are subject to the full state sales tax rate, unless another exemption from state sales tax is applicable.

17.38(5) *Reporting over the phase-out period.* Sales/use tax returns will be filed on the same basis as they are currently filed. During each phase-out period, the entire gross receipts from sales should be reported on the return. The appropriate state sales tax rate for the tax period will be applied by claiming the phased-out portion of the tax rate as a deduction on the return.

Gross receipts for local option taxes are also to be reported in their entirety and computed by applying the appropriate local option tax rate.

The following are examples regarding how state sales and local option taxes should be reported:

EXAMPLE 1. Reporting of tax by an energy provider:

Gross receipts for a tax period in 2002	$100,000
Phase-out (20,000 for the first year, 40,000 for the second year, etc.)	20,000
Taxable sales	80,000
State tax at 5% (to compute state sales tax due)	4,000
Gross receipts to be reported for local option	100,000
Local option tax rate (assuming a 1% local option tax rate)	× 1%
Local option tax due	1,000
Total tax due (local option and state sales tax)	$5,000

EXAMPLE 2. Reporting of tax on an individual billing:

Monthly charge during a billing or delivery period in 2002	$400
State tax rate	× 4%
State tax due	16
Gross receipts for local option tax	400

Local option tax rate	× 1%
Local option tax due	4
Total tax (local option and state sales tax)	$20

This rule is intended to implement Iowa Code section 422.45 as amended by 2001 Iowa Acts, House Files 1 and 705.

701—17.39(422,423) Art centers. Effective July 1, 2001, the gross receipts from sales of goods, wares, or merchandise or from services performed, rendered, or furnished to a private nonprofit art center located in Iowa which are used in the operation of the art center are exempt from sales and use tax.

To be eligible for this exemption all of the following criteria must apply:

17.39(1) The organization seeking to claim this exemption must be a private nonprofit art center. For the purpose of this rule, an "art center" is defined as a structure that displays aesthetic objects which are the product of the conscious use of skill and creative imagination. The structure housing the art must be open to the public with regular hours and with staff available to answer visitors' questions. "Open to the public on a regular basis" means the facility is open for visitors periodically or at fixed intervals.

17.39(2) The art center must be located in Iowa.

17.39(3) Purchases of tangible personal property or services must be for the operation of the art center.

This rule is intended to implement 2001 Iowa Acts, House File 736, section 4.

701—17.40(422,423) Community action agencies. Effective July 1, 2002, the gross receipts from sales of tangible personal property and enumerated services performed for, furnished or rendered to a community action agency and used for the purposes of a community action agency, as defined in Iowa Code section 216A.93, are exempt from tax.

This rule is intended to implement Iowa Code section 422.45 as amended by 2002 Iowa Acts, House File 2622, section 9.

701—17.41(422,423) Legislative service bureau. Effective April 22, 2002, sales by the legislative service bureau and its legislative information office of mementos and other items relating to Iowa history, historical sites, the general assembly, and the state capitol are exempt from tax. The exemption applies to a sale only if it occurs on the premises of property controlled by the legislative council, at the state capitol, or on other state property.

This rule is intended to implement Iowa Code section 422.45 and 2002 Iowa Acts, House File 2585, section 1.

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CHAPTER 18
TAXABLE AND EXEMPT SALES DETERMINED BY METHOD OF TRANSACTION OR USAGE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXAMPLES:

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

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

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

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

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

701—18.6(422,423) Relief agencies.

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

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

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

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

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

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

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

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

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

The claim shall include the following information:

a. The total amount or amounts, valued in money, expended directly or indirectly for goods, wares, merchandise, or services rendered, furnished, or performed used for free distribution to the poor and needy.

b. List the persons making the sales to the relief agency.

1. Include the date of the sale.
2. Include the total amount expended, itemizing sales tax.
3. Include the date of payment.
4. Include the check number, receipt number, or paid invoice verifying payment.

c. List the total operating income received (residents, donations, etc.)

d. List the operating income received from residents only.

e. The claim shall be signed by an authorized agent of the relief agency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

701—18.8(422) Auctioneers.

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

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

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

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

This rule is intended to implement Iowa Code section 422.43.

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

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

701—18.10(422,423) Florists.

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

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

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

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

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

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

18.10(3) Florists engaged in selling shrubbery, trees, and similar items. See rule 18.11(422,423).

This rule is intended to implement Iowa Code section 422.43.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18.16(2) Reserved.

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

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

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

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

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

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

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

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

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

701—18.20(422,423) Communication services. The gross receipts from the sale of all communication services provided in this state are subject to tax. (Communication services are not subject to use tax prior to July 1, 2001. See rule 701—31.7(423).)

18.20(1) Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

h. The sale of any device, new or used, in place at the time of sale on the customer's premises or sold to the customer elsewhere is the sale of tangible personal property, and thus a sale subject to tax. The sale of an entire inventory of devices may or may not be subject to tax, depending upon whether it does or does not come within the purview of the casual sales exemption, see Iowa Code section 422.42(2) and subrule 18.28(3). Other exemptions may be applicable as well. See Iowa Code section 422.45 and 701—Chapter 17.

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

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

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

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

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

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

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

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

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

18.20(6) The gross receipts paid for the performance of the service of sending or receiving any document commonly referred to as a "fax" from one point to another within this state are subject to sales tax. See 18.20(1)*"a."* Gross receipts paid for the service of providing a telephone line or other transmission path for the use of what is commonly called a "fax" machine are the gross receipts from the

performance of a taxable service if the points of transmission and receipt of a fax are in this state. See 18.20(1)*"a"* and *"b."*

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

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

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

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

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

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

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

The mortician or funeral director is considered to be purchasing caskets, outer burial containers, and grave clothing for resale, and may purchase these items from suppliers without payment of tax. The mortician or director should present the supplier with a certificate of resale as set out in rule 701—15.3(422,423). A mortician or director is considered to be the user or consumer of office furniture and equipment, funeral home furnishings, advertising calendars, booklets, motor vehicles and accessories, embalming equipment, instruments, fluid and other chemicals used in embalming,

cosmetics, and grave equipment, stretchers, baskets, and other items if title or possession does not pass to the customer. *Kistner,* supra.

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

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

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

The purchase of materials, supplies, and equipment by these persons is subject to tax unless the particular item is exempt from tax when purchased by an individual for the individual's own use. For example, the purchase for use in the office of prescription drugs would not be subject to tax nor would the purchase of prosthetic devices such as artificial limbs or eyes.

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

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

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

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

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

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

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

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

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

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

Hospitals, infirmaries, and sanitariums may be the purchasers for use or consumption of tangible personal property used or consumed in furnishing services. *Modern Dairy Co. v. Department of Revenue,* 413 Ill. 55, 108 N.E.2d 8 (1952). However, tangible personal property can be purchased for resale by these facilities and, if purchased for resale, is exempt from tax on the purchases. *Burrows*

Co. v. Hollingsworth, 415 Ill. 202, 112 N.E.2d 706 (1953); *Fefferman v. Marohn,* 408 Ill. 542, 97 N.E.2d 785 (1951). Property is purchased for resale if the conditions in subrule 18.31(1) are applicable. See also 701—subrule 15.3(2) with respect to resale exemption certificates.

Depending upon the circumstances, a nonprofit facility may be a charitable institution or organization; a profit facility is not. *Northwest Community Hospital v. Board of Review of City of Des Moines,* 229 N.W.2d 738 (Iowa 1975); *Readlyn Hospital v. Hoth,* 223 Iowa 341, 272 N.W. 90 (1937). Sales by these nonprofit facilities would be exempt from tax if the requirements of Iowa Code section 422.45(3) are met. See rule 701—17.1(422,423).

This rule is intended to implement Iowa Code section 422.45 as amended by 1998 Iowa Acts, House File 2513, and chapter 423.

701—18.25(422,423) Warranties and maintenance contracts.

18.25(1) In general—definitions. "Mandatory warranty." A warranty is mandatory within the meaning of this regulation when the buyer, as a condition of the sale, is required to purchase the warranty or guaranty contract from the seller. "Optional warranty." A warranty is optional within the meaning of this regulation when the buyer is not required to purchase the warranty or guaranty contract from the seller.

18.25(2) Mandatory warranties. When the sale of tangible personal property or services includes the furnishing or replacement of parts or materials which are pursuant to the guaranty provisions of the sales contract, a mandatory warranty exists. If the property subject to the warranty is sold at retail, and the measure of the tax includes any amount charged for the guaranty or warranty, whether or not such amount is purported to be separately stated from the purchase price, the sale of replacement parts and materials to the seller furnishing them thereunder is a sale for resale and not taxable. Labor performed under a mandatory warranty which is in connection with an enumerated taxable service is also exempt from tax.

18.25(3) Optional warranties. For periods after June 30, 1981.

a. The sale of optional service or warranty contracts which provide for the furnishing of labor and materials and require the furnishing of any taxable service enumerated under Iowa Code section 422.43 is considered a sale of tangible personal property the gross receipts from which are subject to tax at the time of sale except as described below.

b. On and after July 1, 1995, the sale of a residential service contract regulated under Iowa Code chapter 523C is not considered to be the sale of tangible personal property, and gross receipts from the sales of these service contracts are no longer subject to tax, and the gross receipts from taxable services performed for the providers of residential service contracts are now subject to tax. See the examples below for more detailed explanation. A "residential service contract" is defined in Iowa Code subsection 523C.1(8) to be: a contract or agreement between a residential customer and a service company which undertakes, for a predetermined fee and for a specified period of time, to maintain, repair, or replace all or any part of the structural components, appliances, or electrical, plumbing, heating, cooling, or air-conditioning systems of residential property containing not more than four dwelling units.

EXAMPLE A. John Jones purchases a residential service contract for $3,000 on July 1, 1994. He pays $150 of Iowa state sales tax. On December 1, 1994, his furnace malfunctions. The service company which sold Mr. Jones the contract pays Smith Furnace Repair $700 to fix the furnace. No sales tax is due on the $700 charge.

EXAMPLE B. Bob Jones purchases a residential service contract for $3,000 on July 1, 1995. No sales tax is owing or paid. On December 1, 1995, his furnace becomes inoperable. The service company which sold Mr. Jones the contract pays Smith Furnace Repair $900 to fix Mr. Jones' furnace. Sales tax of $45 is due based on the $900.

c. On and after July 1, 1998, if an optional service or warranty contract is a computer software maintenance or support service contract and the contract provides for the furnishing of technical support services only and not for the furnishing of any materials, then no tax is imposed on the furnishing of those services under this subrule. If a computer software maintenance or support service contract provides for the performance of nontaxable services and the taxable transfer of tangible personal property, and no

separate fee is stated for either the performance of the service or the transfer of the property, then state sales tax of 5 percent shall be imposed on 50 percent of the gross receipts from the sale of the contract. If a charge for the performance of the nontaxable service is separately stated, see subrule 18.25(5) below.

18.25(4) A preventive maintenance contract is a contract which requires only the visual inspection of equipment and no repair is or shall be included. The gross receipts from the sale of a preventive maintenance contract is not subject to tax.

18.25(5) Additional charges for parts and labor furnished in addition to that covered by a warranty or maintenance contract which are for enumerated taxable services shall be subject to tax. Only parts and not labor will be subject to tax where a nontaxable service is performed if the labor charge is separately stated.

This rule is intended to implement Iowa Code sections 422.42 and 423.2 and Iowa Code Supplement section 422.43 as amended by 1998 Iowa Acts, Senate File 2288.

701—18.26(422) Service charge and gratuity. When the purchase of any food, beverage or meals automatically and invariably results in the inclusion of a mandatory service charge to the total price for such food, beverage or meal, the amounts so included shall be subject to tax. The term "service charge" means either a fixed percentage of the total price of or a charge for food, beverage or meal.

The mandatory service charge shall be considered: (1) a required part of a transaction arising from a taxable sale and a contractual obligation of a purchaser to pay to a vendor arising directly from and as a condition of the making of the sale and (2) a fixed labor cost included in the price for food, beverage or meal even though such charge is separately stated from the charge for the food, beverage or meal.

When a gratuity is voluntarily given for food, beverage or meal it shall be considered a tip and not subject to tax.

Cohen v. Playboy Club International, Inc., 19 Ill. App. 3d 215, 311 N.E.2d 336; *Baltimore Country Club, Inc. v. Comptroller of Treasury,* 272 Md. 65, 321 A.2d 308.

This rule is intended to implement Iowa Code section 422.43.

701—18.27(422) Advertising agencies, commercial artists, and designers.

18.27(1) *Nontaxable services.* Tax does not apply to charges by advertising agencies, commercial artists, or designers for services rendered that do not represent services that are a part of a sale of tangible personal property, or a labor or service cost in the production of tangible personal property. Examples of such nontaxable services are: writing original manuscripts and news releases; writing copy for use in newspapers, magazines, or other advertising, or to be broadcast on television or radio, compiling statistical and other information; placing or arranging for the placing of advertising in media, such as newspapers, magazines, or other publications; billboards and other facilities used in public transportation; and delivering or causing the delivery of brochures, pamphlets, cards, and similar items. Charges for such items as supervision, consultation, research, postage, express, transportation and travel expense, if involved in the rendering of such services, are likewise not taxable.

18.27(2) *Agency fee or commission.* When an amount billed as an agency "fee," "service charge," or "commission" represents a charge or part of the charge for any of the nontaxable services described under 18.27(1), the amount so billed is not taxable. Such charge by an advertising agency will be considered to be made for nontaxable services.

18.27(3) *Items taxable.* The tax applies to the entire amount charged to clients for items of tangible personal property such as drawings, paintings, designs, photographs, lettering, assemblies and printed matter. This includes the cost of typography and reproduction proofs when the latter is used as part of a paste-up, "mechanical" or assembly. Whether the items of property are used for reproduction or display purposes is immaterial.

18.27(4) *Preliminary art.* "Preliminary art" as used herein means roughs, visualizations, comprehensives and layouts prepared for acceptance by clients before a contract is entered into or approval is given for finished art. ("Finished art" as used herein means the final art used for actual reproduction by photo-mechanical or other processes.) Tax does not apply to separate charges for preliminary art, except where the preliminary art becomes physically incorporated into the finished art

as for example, when the finished art is made by inking directly over a pencil sketch or drawing, or the approved layout is used as camera copy for reproduction.

The charge for preliminary art must be billed separately to the client, either on a separate billing or separately charged for on the billing for the finished art. It must be clearly identified on the billing as preliminary art, of one or more of the types mentioned in the preceding paragraph. Proof of ordering or producing the preliminary art prior to date of contract or approval for finished art shall be evidenced by purchase orders of the buyer, or by work orders or other records of the seller.

The following situations are examples of when the sale of "finished art" is taxable:

a. Finished art which is sold to customers to be used for advertising purposes in newspapers, magazines or the like. After the advertiser contracts with the ad agency for the development of an advertising message or theme, the agency devises ideas (preliminary art) and produces the finished art. The finished art is then delivered to the advertiser or to an agent of the advertiser such as a printer or publisher who is under contract with the advertiser to publish the ad.

b. Finished art which is sold to customers, or their agents (e.g., printers), for use in producing printed material. The charge for finished art is taxable even though the art work may later be returned to the ad agency by the purchaser or the printer or used by the customer or the customer's agent to produce a nontaxable item. Since the finished art is not a part of the printed materials, the ad agency's customer is consuming the material and not buying it for resale, or using it in an exempt manner.

c. Finished art which is used to produce other tangible personal property sold by the ad agency such as letterhead stationery and business cards. The charge for such art is taxable as part of the selling price for such stationery or business cards. This is true whether or not the agency separately itemizes the charge for such stationery or business cards.

18.27(5) *Items purchased by agency, artist or designer.* An advertising agency, artist, or designer is the consumer of tangible personal property used in the operation of its business, such as stationery, ink, paint, tools, drawing tables, T-squares, pens, pencils, and other office supplies. Tax applies to the sale of such property to the agency, artist, or designer. Tax also applies where the agency, artist or designer is the consumer of taxable services.

The agency, artist, or designer is the seller of, and may purchase for resale, any item resold before use, or that becomes physically an ingredient or component part of tangible personal property sold, as, for example, illustration board, paint, ink, rubber cement, flap paper, wrapping paper, photographs, photostats, or art purchased from other artists. Tax also applies where the agency, artist, or designer is the seller at retail of taxable services.

In the event that an agency, artist, or designer is both a consumer and a retailer of such items of tangible personal property as noted in this subsection, such agency, artist or designer should:

a. Purchase such items without tax liability if the majority of the items are sold at retail and remit the tax at the time of resale or at the time such items are consumed in the operation of the business.

b. Pay tax to suppliers at the time of purchase if the majority of the items will be consumed in the operation of the business and deduct the original cost of any such items subsequently sold at retail when reporting tax on their returns.

18.27(6) *Construction.* Nothing contained in this rule shall be construed to provide for an exemption from tax for services expressly taxable in rules 701—26.17(422) and 26.39(422).

18.27(7) *Advertising agencies, commercial artists and designers as agent of client or as a nonagent.*

a. In general. A true agent relationship depends upon the facts with respect to each transaction. An agent is one who represents another, called the principal, in dealings with third persons. Advertising agencies, commercial artists, and designers may act as agents on behalf of their clients in dealing with third persons or they may act on their own behalf. To the extent advertising agencies, artists and designers act as agents of their clients in acquiring tangible personal property, they are neither purchasers of the property with respect to the supplier nor sellers of the property with respect to their principals.

b. When advertising agencies, commercial artists, and designers act as agents of their clients in purchasing property for their clients, the tax applies to the gross receipts from the sale of such property to the advertising agencies, commercial artists, and designers. Unless such advertising agencies, commercial artists and designers act as true agents, they will be regarded as the retailers of tangible

personal property furnished to their clients and the tax will apply to the total amount received for such property. Further, nothing in this rule should be construed to be in variance with the opinion of the Iowa Supreme Court in *Rowe vs. Iowa State Tax Commission,* 249 Iowa 1207, 91 N.W.2d 548 (1958).

c. To establish that a particular acquisition is made in the capacity of an agent for a client, advertising agencies, commercial artists, and designers (collectively herein referred to as agency) shall act as follows:

1. The agency must clearly disclose to the supplier the name of the client for whom the agency is acting as an agent.

2. The agency must obtain, prior to the acquisition, and retain written evidence of agent status with the client.

3. The price billed to the client, exclusive of any agency fee, must be the same as the amount paid to the supplier. The agency may make no use of the property for its own account, such as commingling the property of a client with another, and the reimbursement for the property should be separately invoiced or shown separately on the invoice to the client.

d. Some charges may represent reimbursement for tangible personal property acquired by the agency as agents for its clients and compensation for performing of agency services related thereto. When an advertising agency, commercial artist, or designer establishes that it has acquired tangible personal property as agents for its clients, tax does not apply to the charge made by the agency to its client for reimbursement charges by a supplier or to the charges made for the performance of the agency's services directly related to the acquisition of personal property.

e. Advertising agencies, commercial artists, and designers acting as agents shall not issue resale certificates to suppliers.

f. Advertising agencies, commercial artists, and designers act as retailers of all items of tangible personal property produced or fabricated by their own employees when they sell to their clients. Advertising agencies, commercial artists, and designers are not agents of their clients with respect to the acquisition of materials incorporated into items of tangible personal property prepared by their employees and sold at retail to their clients.

18.27(8) *Scope.* The scope of this rule is not confined simply to advertising agencies, commercial artists and designers, but also applies to all other businesses whose activities would bring them within the scope of this rule (e.g., printers).

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

701—18.28(422,423) Casual sales.

18.28(1) *Casual sales by persons not retailers or by retailers outside the regular course of business.* Casual sales are exempt from the Iowa sales and use taxes except for the casual sale of vehicles subject to registration, and vehicles subject only to the issuance of a certificate of title. On and after July 1, 1988, the casual sale of aircraft is also taxable. In order for a casual sale to qualify for exemption under this subrule, two conditions must be present: (1) the sale of tangible personal property or taxable services must be of a nonrecurring nature, and (2) the seller, at the time of the sale, must not be engaged for profit in the business of selling tangible goods or services taxed under Iowa Code section 422.43 or, if so engaged, the sale must be outside the regular course of the seller's business (Order of State Board of Tax Review, Martin Development Corporation, Docket No. 136, December 1, 1976, incorporating by reference Order of Department of Revenue Hearing Officer in Docket No. 75-28-6A-A, July 9, 1976). See subrule 18.28(2) for an explanation of the casual sale exemption applicable to the liquidation of a trade or business.

If either of the conditions above are lacking, no casual sale occurs. Moreover, prior to July 1, 1985, the casual sale exemption was limited to sales of tangible personal property, and casual enumerated taxable services did not qualify for the exemption. *KTVO, Inc. v. Bair,* Equity No. 385 Linn County District Court, September 5, 1975.

For the purposes of this subrule, the word "aircraft" refers to any contrivance now known or hereafter invented, which is designed or used for navigation of or flight in the air, for the purpose of transporting persons, property, or both or for crop dusting, aerial surveillance, recreational flying, or for providing

some other service. By way of nonexclusive example, balloons, gliders, helicopters, and "ultra lights" are aircraft. Also included within the meaning of the word "aircraft" is any craft registered under Iowa Code section 328.20 or any successor statute thereto.

Sales of capital assets such as equipment, machinery, and furnishings which are not sold as inventory shall be deemed outside the regular course of business (including sales of capital assets during a retailer's liquidation) and the casual sales exemption shall apply as long as such sales are nonrecurring. This will include transactions exempted from state and federal income tax under Section 351 of the Internal Revenue Code.

Two separate selling events outside the regular course of business within a 12-month period shall be considered nonrecurring. Three such separate selling events within a 12-month period shall be considered as recurring. Tax shall only apply commencing with the third separate selling event. However, in the event that a sale event occurs consistently over a span of years, such sale is recurring and not casual, even though only one sales event occurs each year. *Des Moines Police Department v. Bair,* Equity No. CE3-1591, Polk County District Court, November 1, 1976.

EXAMPLE: Corporation A sells the company copy machine at retail to B. At the time of this sale, Corporation A is engaged in the business for profit of selling clothes at retail. Assuming that the sale of the copy machine constitutes a sale of a nonrecurring nature, there is a casual sale because the sale is outside the regular course of Corporation A's business.

EXAMPLE: Corporation C is engaged in the business of lending money secured by collateral. In the course of such business, Corporation C must repossess some collateral and sell it at retail for purposes of payment of loans. Such sales recur from time to time. Notwithstanding that Corporation C is presumably not engaged in the business of selling tangible goods or services for a profit, since the sales are recurring, there is no casual sale. *S & M Finance Co., Fort Dodge v. Iowa State Tax Commission,* 1968, Iowa 162 N.W.2d 505.

EXAMPLE: F, a farmer, does not sell tangible personal property at retail or engage in the performance of any taxable services. F liquidates the farming business and hires a professional auctioneer to auction off many items of tangible personal property. Assuming this liquidation event is casual, all items sold by the auctioneer at retail are casual sales notwithstanding that many different sales to numerous different buyers may occur. See rule 18.8(422).

EXAMPLE: H, an insurance agency, holds a semiannual event to sell its used office furniture. Even though H does not regularly sell tangible personal property at retail, the casual sale exemption does not apply because the selling events are recurring. *Des Moines Police Department v. Bair,* Equity No. CE3-1591, Polk County District Court, November 1, 1976.

EXAMPLE: I, a corporation, has one sales event every year whereby it auctions off capital assets which it has no use for or desires to replace. This event has been a planned function of I and is conducted regularly and consistently over a span of years. Even though this sale event occurs only once a year, it is of a recurring nature because of the pattern of repetitiveness present and, therefore, the casual sale exemption would not apply, regardless of the number of items sold at such sale event each year.

EXAMPLE: J, a corporation engaged in the sale for resale of tangible personal property, sells three capital assets used in J's trade or business consisting of a copy machine, a desk, and a computer. Each sale is made to different buyers and is unrelated to the other sales. The three sales occur in January, June, and October of the same year. The sale made in October consists of a desk. J has not established a pattern of recurring sales of capital assets prior to aforementioned sales of capital assets. Under these circumstances, the sale of the desk is not a casual sale, but the sales of the copy machine and the computer are casual and exempt.

EXAMPLE: K, a corporation, is primarily engaged in the business of road construction. From time to time, it sells used capital assets and scrap materials reclaimed from its road construction work to individuals and businesses. It does not advertise itself as a retailer of these assets and materials but sells them as a matter of courtesy to persons who cannot purchase them elsewhere. After 42 years of operation, it decides to liquidate. Pursuant to that decision, K employs two auctioneers to sell its capital assets and ceases operation after its assets are sold. K had only one capital asset sale during the 12 months immediately preceding each liquidation auction sale. The auction sales are exempt casual sales

under this subrule (1) because they are nonrecurring, and (2) because K is not a retailer of the capital assets sold during its liquidation. See *Holland Bros. Construction Co., Inc. v. Iowa State Board of Tax Review*, 611 N.W.2d 495 (Iowa 2000).

EXAMPLE: L, a sole proprietorship, engaged in selling automobile parts at retail, incorporated. The assets of L are sold to the new corporation in exchange for stock and the new corporation now engages in selling automobile parts at retail. The casual sale exemption would apply, but only because of the exemption set out in subrule 18.28(2) infra, since the transfer involves a liquidation of L's business and the sale of L's inventory to another person (the corporatin) which will continue to engage in a similar trade or business.

The above examples are not the only ones pertaining to the questions of whether a casual sale did or did not occur. However, because of the myriad of factual situations which can and do exist, it is not possible to formulate more detailed rules on this subject matter.

18.28(2) *Special rules for casual sales involving the liquidation of a trade or business.* When retailers sell all or substantially all of the tangible personal property held or used in the course of the trade or business for which retailers are required to hold a sales tax permit, the casual sale exemption will apply to exempt those sales only when the following circumstances exist: (1) the trade or business must be transferred to another person, and (2) the transferee must engage in a similar trade or business. The trade or business transferred refers to the place where the business is located since each taxable retail business must have a sales tax permit at each location. For purposes of this casual sale circumstance, it is irrelevant whether the retailer actually has a sales tax permit or not; rather, the relevant circumstance is that the retailer was required to have a sales tax permit. See *Holland Bros. Construction Co., Inc. v. Iowa State Board of Tax Review*, 611 N.W.2d 495 (Iowa 2000). One effect of this is that a retailer who is closing as opposed to transferring a business and is selling inventory in the process of this closing is not entitled to claim the casual sale exemption under this subrule, but see subrule 18.28(1), and the resale exemption is always potentially applicable to sales of inventory. See the examples below for further explanation.

EXAMPLE: L, a hardware store, desires to liquidate the business. L had been selling tangible personal property at retail and was required to have an Iowa retail sales tax permit. L hires a professional auctioneer and all items of inventory, equipment, and fixtures are sold to various purchasers. These items consist of all or substantially all of the tangible personal property held or used by L in the course of the business for which a sales tax permit was required to be held. L, however, does not transfer the trade or business to anyone else. Under these circumstances, the casual sales exemption does not apply to the sale of the inventory, but see subrule 18.28(1) for criteria which determine whether the casual sales exemption applies to the equipment and fixtures.

EXAMPLE: The facts are the same as those in the previous example, except that L is liquidating its business because it attempted to build a new store and its entire inventory was destroyed by fire while in storage. An auctioneer sells L's equipment and trade fixtures to various purchasers. The auctioneer's sale of the equipment and trade fixtures is an exempt casual sale of the type described in subrule 18.28(1) because (1) it is nonrecurring, and (2) it is outside the usual course of L's business. See *Holland Bros. Construction Co., Inc.*, supra.

EXAMPLE: M, a sole proprietorship, incorporated. The assets of M are sold to the new corporation for stock. The new corporation engaged in a similar business. The casual sale exemption would apply.

EXAMPLE: N, an oil company, sells all or substantially all of the tangible personal property of ten company-owned service stations which were held or used in the course of its business, for which N was required to hold a sales tax permit, by bulk sales or otherwise. The sales were made to O, P, and Q and occurred at different times during the same year, each sale being unrelated. N was required to have a sales tax permit for each service station. N transferred its trade or business (each service station) to O, P, and Q, each of whom will engage in the same business N did, i.e., operation of service stations. Even though under these circumstances, the sales by N are recurring, the casual sales exemption would apply since each trade or business was transferred to another person who did engage in a similar trade or business.

EXAMPLE: R, an operator of a restaurant, auctions off to various purchasers who are not engaged in the restaurant business all or substantially all of the tangible personal property held or used in the business for which R was required to hold a retail sales tax permit. R transfers the trade or business to S who then operates a restaurant at the same location R did. Even if S did not purchase any of the tangible personal property, under these circumstances, the casual sales exemption applies. The tangible personal property held or used in the trade or business need not be sold to the same person to whom the trade or business is sold for the exemption to apply.

EXAMPLE: T, a restaurant, sells all of its tangible personal property held or used in the course of its business for which it was required to hold a sales tax permit to U. T also sells its trade or business to U. U engages in the business of operation of a dance hall and does not continue to operate the restaurant. This subrule's casual sales exemption will not apply, but see subrule 18.28(1) for the criteria of a casual sale exemption which could apply.

The above examples are not the only ones pertaining to the questions of whether a casual sale did or did not occur. However, because of the myriad of factual situations which can and do exist, it is not possible to formulate more detailed rules on this subject matter.

18.28(3) *Casual sales of services.* Special rule for services rendered, furnished, or performed on or after July 1, 1985. The "casual sale" of an enumerated service has occurred if the following circumstances exist:

a. The service was rendered, furnished, or performed on or after July 1, 1985; and

b. The service was rendered, furnished, or performed on a nonrecurring basis by a seller who, at the time of the sale of the service, is not engaged for profit in the business of selling tangible goods or services taxed under Iowa Code section 422.43, or, if so engaged, the sale was outside the regular course of the seller's business; or

c. The sales of all, or substantially all of the services held or used by a retailer in the course of the retailer's trade or business for which the retailer is required to hold a sales tax permit, if the retailer sells or otherwise transfers the trade or business to another person who engages in a similar trade or business.

EXAMPLE: V ordinarily engages in janitorial and building maintenance or cleaning which are taxable services; see rule 701—26.60(422). Once, as a favor to customer W, V cut customer W's lawn and otherwise performed the taxable service of "lawn care" for customer W. Since this performance of lawn care was not "within V's regular course of business" and was not "recurring," gross receipts from the lawn care are not subject to tax.

EXAMPLE: Corporation X rents a piece of equipment from Y. Y does not otherwise rent equipment and does not engage in the business for profit of selling tangible goods or taxable enumerated services. A casual sale qualifying for the exemption exists.

This rule is intended to implement Iowa Code sections 422.42(12), 422.45(6) and 423.4.

701—18.29(422,423) Processing, a definition of the word, its beginning and completion characterized with specific examples of processing.

18.29(1) *Processing—a definition.* For the purpose of these rules, "processing" means an operation or a series of operations whereby tangible personal property is subjected to some special treatment by artificial or natural means which changes its form, context, or condition, and results in marketable tangible personal property. These operations are commonly associated with fabricating, compounding, germinating, or manufacturing. *Linwood Stone Products Co. v. State Department of Revenue,* 175 N.W.2d 393 (Iowa 1970).

18.29(2) *The beginning of processing.* Processing begins when the "form, context, or condition" of tangible personal property is changed with the intent of eventually transforming the property into a saleable finished product. The severance of raw material from real estate is not processing, even if this severance results in a change in the form, context, or condition of the real estate. *Linwood Stone Products Co. v. State Department of Revenue,* 175 N. W.2d 393 (Iowa 1970). Furthermore, transportation of raw material after it is severed from real estate but prior to the time the initial change in the form, context, or condition of the raw material occurs is not processing. *Southern Sioux County Rural Water System, Inc. v. Iowa Department of Revenue,* 383 N.W.2d 585 (Iowa 1986).

18.29(3) *The completion of processing.* Processing ends when the property being processed is in the form in which it is ultimately intended to be sold at retail, *Hy-Vee Food Stores v. Iowa Department of Revenue,* 379 N.W.2d 37 (Iowa App. 1985). The storage or transport of property after that property is transformed into a finished product is not a part of processing.

18.29(4) *Examples of when processing begins and ends.* The following examples are intended to clarify but not to contradict the explanation of processing set out in subrules 18.29(2) and 18.29(3).

EXAMPLE A: A company blasts limestone from the ground, bulldozers pick the limestone up and put it in trucks; these trucks transport the limestone to a crusher some distance from the quarry site. The first change in the "form" or "condition" of the limestone, while it is tangible personal property, occurs when the stone is crushed in the crusher. The blasting of the stone from the ground and its transport to the crusher would be acts preparatory to and not a part of processing. Thus, fuel used in the bulldozers and transport trucks would not be fuel used in processing, *Linwood Stone Products,* supra.

EXAMPLE B: Pumps remove water from underground wells and pump that water through pipes to a water treatment plant. At the treatment plant, the water passes initially through an aeration system which adds oxygen to it. At other points in the plant, potassium and chlorine are added to the water and iron is removed. After these acts are performed, clean, drinkable water exists. The first change, however, in the condition of the water occurs when it passes through the aeration system and oxygen is added to it. The withdrawal of the water from the ground and its transport to the aeration system would not be a part of processing. Thus, electricity used by the pumps which pump the water to the aeration system would not be used in processing. However, by way of contrast, electricity used to transport the water between, for example, the aeration system and the point where potassium is added to the water would be used in processing. *Southern Sioux Rural Water System, Inc.,* supra.

EXAMPLE C: Water is processed in a treatment plant. The last act at the plant necessary to render the water drinkable or a "finished product" is the addition of chlorine. After the addition of chlorine, the water is pumped first into wells and later into water towers where it is held for distribution. The pumping of this drinkable water from the point where the chlorine is added to the wells and the tower is not a part of processing because processing of the water ended with the addition of the chlorine; thus, electricity used in these pumps is not electricity used in processing. *Southern Sioux County Rural Water System, Inc.,* supra.

18.29(5) *Integral part of the production of the product test.* Certain activities may be exempt as part of processing if those activities are very closely interconnected with, or an integral part of, the operation of the processing equipment while processing is occurring. *Southern Sioux Rural Water System, Inc.,* supra. Merely because an activity is vital or essential to a processing operation does not make that activity exempt as part of processing unless the activity itself is closely interconnected with, or an integral part of, the operation of the processing equipment while processing is occurring. *Mississippi Valley Milk Producers Ass'n v. Iowa Dept. of Revenue,* 387 N.W.2d 611 (Iowa App. 1986). See the nonexclusive example below.

A manufactures nails. In A's factory is a machine which draws steel into long rods the width of whatever nail A may wish to manufacture. After this machine draws the steel into the desired-size rods, the rods are moved to a second machine by a conveyor belt. This second machine cuts the rods into the length of nail which A desires. A second conveyor belt then transports these cut rods to a third machine which sharpens one end of the rod to a point and puts a "nail head" on the other end of the rod. The activities of the three machines are clearly processing, in that they are activities which change the form, context or condition of raw material, and as a result of those activities, marketable tangible personal property or a finished product is created. The two conveyor belts move the partially finished nails from one piece of processing equipment to another while processing is occurring. Since the activities of the conveyors are very closely interconnected with and an integral part of the operation of the various pieces of processing equipment while processing is occurring, the conveyor belts are involved in processing as well.

18.29(6) *Other specific examples of processing.* The Iowa Supreme Court has also stated that the following activities are processing: manufacturing ice, refrigerating cheese to age it from "green" to edible, refrigerating eggs to change their flavor, pasteurizing and subsequent refrigeration of milk, "hard"

freezing of meat and butter for aging, canning vegetables and cooking foodstuffs; *Fischer Artificial Ice & Cold Storage Co. v. Iowa State Tax Commission,* 248 Iowa 497, 81 N.W.2d 437 (1957); and, *Mississippi Valley Milk Producers v. Iowa Dept. of Revenue and Finance,* 387 N.W.2d 611 (Ia. App. 1986), also crushing of "flat rock" limestone and treating limestone in kilns. *Linwood Stone Products Co. v. State Dept. of Revenue,* 175 N.W.2d 393 (Iowa 1970). See 701—subrule 17.3(2) for an expanded definition of processing with regard to food manufacturing.

18.29(7) *Other department rules concerned with processing.* Various sections of the Iowa Code set out activities which are defined by statute to be "processing". The rules interpreting these statutes for the purposes of sales and use tax law are the following:

a. 15.3(422,423) Certificates of resale, processing, and fuel used in processing.

b. 17.2(422) Fuel used in processing—when exempt.

c. 17.3(422,423) Electricity, steam, or other taxable services to be used in the processing of tangible personal property intended to be sold ultimately at retail are exempt from sales tax.

d. 17.9(422,423) Sales of breeding livestock, fowl, and certain other property used in agricultural production. See 701—subrules 17.9(4), 17.9(5), 17.9(6), and 17.9(7) for processing exemptions.

e. 17.14(422,423) Chemicals, solvents, sorbents, or reagents used in processing.

f. 18.3(422,423) Chemical compounds used to treat water.

g. 18.45(422,423) Sale or rental of computers, industrial machinery and equipment; refund of and exemption from tax paid for periods prior to July 1, 1997.

h. 18.58(422,423) Sales or rentals of machinery, equipment, and computers and sales of fuel and electricity to manufacturers and sales or rentals of computers to commercial enterprises for periods on and after July 1, 1997.

i. 26.2(422) Enumerated services exempt. See 701—subrule 26.2(2) for the processing exemption.

j. 28.2(423) Processing of property defined.

k. 33.3(423) Fuel consumed in creating power, heat, or steam for processing or generating electric current.

l. 33.7(423) Property used to manufacture certain vehicles to be leased.

701—18.30(422) Taxation of American Indians.

18.30(1) *Definitions.*

"American Indians" means all persons of Indian descent who are members of any recognized tribe.

"Settlement" means all lands within the boundaries of the Mesquakie Indian settlement located in Tama County, Iowa and any other recognized Indian settlement or reservation within the boundaries of the state of Iowa.

18.30(2) *Retail sales tax—tangible personal property.* Retail sales of tangible personal property made on a recognized settlement or reservation to Indians who are members of the tribe located on that settlement or reservation, where delivery occurs on the reservation, are exempt from tax *(Bryan v. Itasca County,* 426 U.S. 373, 376-77 (1976); *Moe v. Confederated Salish & Kootenai Tribes,* 425 U.S. 463, 475-81 (1976)). Retail sales of tangible personal property made on a recognized settlement or reservation to Indians where delivery occurs off the reservation are subject to tax. Retail sales of tangible personal property made to non-Indians on a recognized settlement or reservation are subject to tax regardless of where the delivery occurs. Sales made to non-Indians are taxable even though the seller may be a member of a recognized settlement or reservation.

18.30(3) *Retail sales tax—services.* Sales of enumerated taxable services and sales made by municipal corporations furnishing gas, electricity, water, heat, or communication services to Indians who are members of the tribe located on the recognized settlement or reservation where delivery of the service occurs are exempt from tax *(Bryan v. Itasca County,* 426 U.S. 373, 376-77 (1976); *Moe v. Confederated Salish & Kootenai Tribes,* 425 U.S. 463, 475-81 (1976)). Sales of enumerated taxable services or sales made by municipal corporations furnishing gas, electricity, water, heat, or communication services to Indians where delivery of the services occurs off a recognized settlement or reservation are subject to tax.

18.30(4) *Off-reservation purchases.* Purchases made by Indians off a recognized settlement or reservation are subject to tax if delivery occurs off the reservation. Purchases made by Indians off a recognized settlement or reservation are not subject to tax if delivery is made on the reservation to Indians who are members of the tribe located on that reservation.

See rule 701—33.5(423) for the taxation of tangible personal property and services where the state use tax may be applicable.

This rule is intended to implement Iowa Code sections 422.42, 422.43, and 422.45(1).

701—18.31(422,423) Tangible personal property purchased by one who is engaged in the performance of a service.

18.31(1) *In general. (Effective July 1, 1990)*

a. On and after July 1, 1990, tangible personal property purchased by one who is engaged in the performance of a service is purchased for resale and not subject to tax if (1) the provider and user of the service intend that a sale of the property will occur, and (2) the property is transferred to the user of the service in connection with the performance of the service in a form or quantity capable of a fixed or definite price value, and (3) the sale is evidenced by a separate charge for the identifiable piece or quantity of property.

b. Prior to July 1, 1990, in those circumstances in which tangible personal property is purchased by one who is engaged in the performance of a service and the property is transferred to the customer in conjunction with a performance of the service in a form or quantity which is capable of any fixed or definite price value, but the actual sale of the property is not indicated by a separate charge for the identifiable item, the burden of proving that the property was purchased for resale by one engaged in the performance of a service and not subject to tax at the time of purchase is upon the person engaged in the performance of a service who asserts this.

c. Tangible personal property which is not sold in the manner set forth in *"a"* or *"b"* above is not purchased for resale and thus is subject to tax at the time of purchase by one engaged in the performance of a service. Such tangible personal property is considered to be consumed by the purchaser who is engaged in the performance of a service and the person performing the service shall pay tax upon the sale at the time of purchase.

EXAMPLE: An investment counselor purchases envelopes. These envelopes are used to send out monthly reports to the investment counselor's clients regarding their accounts. Tax is due at the time the investment counselor purchases the envelopes if the clients are not billed for these items. Each envelope is transferred to a client in a form or quantity which is capable of a fixed or definite price value. However, there must also be an actual sale to the client (customer) of an item of personal property in order that there be a "resale" of the item.

An automobile repair shop purchases solvents which are used in cleaning automobile parts and thus in performing its automobile repair service. Tax is due at the time the automobile repair shop purchases the solvent since the solvents are not sold to the customer and, in this case, the item is not transferred to a customer in a form or quantity which is capable of a fixed or definite price value. Thus, the solvent is deemed consumed by the purchaser engaged in the performance of the service.

EXAMPLE: A retailer purchases television tubes tax-free where the retailer makes a separate charge for the tube to the customer and since the tube is transferred to the customer in a form or quantity capable of a fixed or definite price value.

EXAMPLE: A beauty or barber shop purchases shampoo and other items to be used in the performance of its service. Tax is due at the time the beauty or barber shop purchases such items from its supplier, where the customers of the beauty or barber shop are not separately billed for the item, and because it is not transferred to the customer in a form or quantity capable of a fixed or definite price value, it is being consumed by the beauty or barber shop.

EXAMPLE: A car wash purchases water, electricity, or gas used in the washing of a car. The car wash would be the consumer of the water, electricity, or gas and tax is due at the time of purchase. The items purchased by the car wash are not transferred to the customer in a form or quantity capable of a fixed or definite price value, and the customer is not billed for the item.

EXAMPLE: An accounting firm purchases plastic binders which are used to cover the reports issued to its customers. These binders would be subject to tax at the time of purchase by the firm where the customer of the firm is not billed for the item, there being no sale to the customer in such a case.

EXAMPLE: A meat locker purchases materials such as wrapping paper and tape which it uses to wrap meat for customers who provide the locker with the meat. These materials would be subject to tax at the time of purchase by the meat locker because they are not sold to the customer in a form or quantity capable of a fixed or definite price value.

EXAMPLE: A jeweler purchases materials such as main springs and crystals to be used in the performance of a service. These items are purchased by the jeweler for resale where they are transferred to the customer in a form or quantity capable of a fixed or definite price value and each item is actually sold to the customer as evidenced by a separate charge therefor.

EXAMPLE: A lawn care service applies fertilizer, herbicides, and pesticides to its customers' lawns. The following are examples of invoices to customers which are suitable to indicate a lawn care service's purchase of the fertilizer, herbicides, and pesticides for resale to those customers: "Chemicals...31 Gal....$60"; "Fertilizer...50 lbs....$100"; and "Materials applied to lawn...4 bushel...$40". The following are examples of information placed upon an invoice which would not indicate a purchase for resale to the customers invoiced: "Fifty percent of the charge for this service is for materials placed on a lawn," or "Lawn chemicals...$30" or "Fifty pounds of fertilizer was applied to this lawn."

18.31(2) *Purchases made by automobile body shops or garages with body shops (effective October 1, 1980).*

Tangible personal property purchased by body shops can be purchased for resale provided both of the following conditions are met:

1. The property purchased for resale is actually transferred to the body shop's customer by becoming an ingredient or component part of the repair work. See Iowa Code section 422.42(2) and *Cedar Valley Leasing Inc. v. Iowa Department of Revenue,* 274 N.W.2d 357 (Iowa 1979).

2. The property purchased for resale is itemized as a separate item on the invoice to the body shop's customer and is transferred to the customer in a form or quantity capable of a fixed or definite price value.

If either of the above two events is missing, there is no purchase for resale and the body shop is deemed the consumer of the item purchased.

When body shops purchase items which will be resold (see list of items in this rule) in the course of the repair activity, the vendors selling to the body shops are encouraged to accept a valid resale certificate at the time of purchase. See rule 701—15.3(422,423). Failure of the vendor to accept a valid resale certificate may subject that vendor to sales tax liability since the burden of proof would be on the vendor that a sale was made for resale. If the vendor cannot meet that burden, the vendor will be liable for the sales tax. Such burden is not met merely by a showing that the purchaser had obtained from the department an Iowa retail sales tax or retail use tax permit.

For insurance purposes, body shops are reimbursed by insurance companies for "materials" which such shops consume in rendering repair services. Some of the materials are transferred to the recipients of the repair services and some are not. Of those so transferred, such transfer is in irregular quantities and is not in a form or quantity capable of a fixed or definite price value. Therefore, body shops are generally deemed to be the consumers of materials and must pay tax on these items at the time of purchase. Nonexclusive examples of items most likely to be included in this category of "materials," whether actually transferred to customers of body shops or not, are as follows:

Abrasives
Accessories
Battery water
Body filler or putty
Body lead
Bolts, nuts and washers
Brake fluid
Buffing pads

Chamois
Cleaning compounds
Degreasing compounds
Floor dry
Hydraulic jack oil
Lubricants
Masking tape
Paint
Polishes
Rags
Rivets and cotter pins
Sand paper
Sanding discs
Scuff pads
Sealer and primer
Sheet metal
Solder
Solvents
Spark plug sand
Striping tape
Thinner
Upholstery tacks
Waxes
White sidewall cleaner

The following are nonexclusive examples of parts which can be purchased for resale since they are generally transferred to the body shop's customer during the course of the repair in a form or quantity capable of a fixed or definite price value and are generally itemized separately as parts.

Batteries
Brackets
Bulbs
Bumpers
Cab corners
Chassis parts
Doors
Door guards
Door handles
Engine parts
Fenders
Floor mats
Grills
Headlamps
Hoods
Hub caps
Radiators
Rocker panels
Shock absorbers
Side molding
Spark plugs
Tires
Trim
Trunk lids
Wheels

Window glass
Windshield ribbon
Windshields

The following are nonexclusive examples of tools and supplies which are generally not transferred to the body shop's customer during the course of the repair and therefore could not be purchased for resale. The body shop is deemed the consumer of these items since they are not transferred to a customer and therefore the body shop must pay tax to the vendor at the time of purchase.

Air compressors and parts
Body frame straightening equipment
Brooms and mops
Buffers
Chisels
Drill bit
Drop cords
Equipment parts
Fire extinguisher fluids
Floor jacks
Hand soap
Hand tools
Office supplies
Paint brushes
Paint sprayers
Sanders
Spreaders for putty
Signs
Washing equipment and parts
Welding equipment and parts

Because of the nature of their business and the formulas devised by the insurance industry to reimburse body shops for cost of "materials," it is possible for body shops, in their invoices to their customers, to separately set forth labor, resold parts, and materials. While the materials can be separately invoiced as one general item, there is no way to ascertain a definite and fixed price for each item of the materials listed in this rule and consumed by the body shops and some of such individual materials are not even transferred by body shops to their customers. Therefore, the body shops are generally the "consumers" of "materials" and do not purchase them for resale. *W. J. Sandberg Co. v. Iowa State Board of Assessments and Review,* 225 Iowa 103, 278 N.W. 643 (1938). Thus, body shops should pay tax to their suppliers on all materials purchased and consumed by them. If materials are purchased from non-Iowa suppliers who do not collect Iowa tax from body shops, such body shops should remit consumer use tax to the Department of Revenue on such materials.

Body shops must collect sales tax on the taxable service of repairing motor vehicles. See rule 701—26.5(422). However, due to the nature of the insurance formulas, it is possible for body shops to itemize that portion of their billing which would be for repair services and that portion relating to consumed "materials." It is also possible for body shops to itemize that portion of their charges for parts which they purchase for resale to their customers. Body shops do not and cannot resell the tools and supplies previously listed in this rule and are taxable on their purchases of such items.

Therefore, as long as body shops separately itemize on their invoices to their customers the amounts for labor, parts, and for "materials," body shops should collect sales tax on the labor and the parts, but not on the materials as enumerated in this rule.

EXAMPLE: A body shop repairs a motor vehicle by replacing a fender and painting the vehicle. In doing the repair work, the body shop uses rags, sealer and primer, paint, solder, thinner, bolts, nuts and washers, masking tape, sandpaper, waxes, buffing pads, chamois, solder and polishes. In its invoice to the customer, the labor is separately listed at $300, the part (fender) is separately listed at $300, and the category of "materials" is separately listed for a lump sum of $100, for a total billing of $700. The Iowa

sales tax computed by the body shop should be on $600 which is the amount attributable to the labor and the parts. The materials consumed by the body shop were separately listed and would not be included in the tax base for "gross taxable services" as defined in Iowa Code subsection 422.42(16), which is taxable in Iowa Code section 422.43.

In this example, if the "materials" were not separately listed on the invoice, but had been included in either or both of the labor or part charges by marking up such charges, the body shop would have to collect sales tax on the full charges for parts or labor even though tax was paid on materials by the body shop to its supplier at time of purchase.

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

701—18.32(422,423) Sale, transfer or exchange of tangible personal property or taxable enumerated services between affiliated corporations.

18.32(1) *In general.* The sale, transfer or exchange of tangible personal property or taxable services among affiliated corporations, included but not limited to a parent corporation to a subsidiary corporation, for a consideration is subject to tax. A bookkeeping entry for an "account payable" qualifies as consideration as well as the actual exchange of money or its equivalent. Transactions between affiliated corporations may not be subject to tax where it can be shown that the affiliated corporations are operating as a unit within the meaning of Iowa Code sections 422.42(1) and 423.1(8).

18.32(2) *Affiliated corporations acting as a unit.* If an affiliated corporation acts as an agent for the other affiliated corporation in a transaction listed in 18.32(1) such corporation shall be considered as acting as a unit as set forth herein and such transactions may not be subject to tax.

This rule should not be equated with the unitary business concept used in corporation income tax law.

This rule is intended to implement Iowa Code sections 422.42(1) and 423.1(8).

701—18.33(422,423) Printers' and publishers' supplies exemption with retroactive effective date.

18.33(1) For the purposes of this rule, a "printer" is any person, a portion of whose business involves the completion of a finished, printed product for sale at retail by that person or another person. A "printer" is also any person, a portion of whose business involves the completion of a finished printed packaging material used to package products for ultimate sale at retail. The term "printer" does not include any person printing or copyrighting printed material for its own use or consumption and not for resale. A "publisher" means and includes any person who owns the right to produce, market, and distribute printed literature and information for ultimate sale at retail.

18.33(2) Effective May 4, 1995, and retroactive to July 1, 1983, the gross receipts from the sale or rental of the following to a printer or publisher are exempt from tax: acetate; antihalation backing; antistatic spray; back lining; base material used as a carrier for light sensitive emulsions; blankets; blow-ups; bronze powder; carbon tissue; codas; color filters; color separations; contacts; continuous tone separations; creative art; custom dies and die cutting materials; dampener sleeves; dampening solution; design and styling; diazo coating; dot etching; dot etching solutions; drawings; drawsheets; driers; duplicate films or prints; electronically digitized images; electrotypes; end product of image modulation; engravings; etch solutions; film; finished art or final art; fix; fixative spray; flats; flying pasters; foils; goldenrod paper; gum; halftones; illustrations; ink; ink paste; keylines; lacquer; lasering images; layouts; lettering; line negatives and positives; linotypes; lithographic offset plates; magnesium and zinc etchings; masking paper; masks; masters; mats; mat service; metal toner; models, modeling; mylar; negatives; nonoffset spray; opaque film process paper; opaquing; padding compound; paper stock; photographic materials: acids, plastic film, desensitizer emulsion, exposure chemicals, fix, developers, paper; photography, day rate; photopolymer coating; photographs; photostats; photo-display tape; phototypesetter materials; pH-indicator sticks; positives; press pack; printing cylinders; printing plates, all types; process lettering; proof paper; proofs and proof processes, all types; pumice powder; purchased author alterations; purchased composition; purchased phototypesetting; purchased stripping and paste-ups; red litho tape; reducers; roller covering; screen tints; sketches; stepped plates; stereotypes; strip types; substrate; tints; tissue overlays; toners; transparencies; tympan;

typesetting; typography; varnishes; Veloxes; wood mounts; and any other items used in a similar capacity to any of the above-enumerated items by the printer or publisher to complete a finished product for sale at retail. Expendable tools and supplies not enumerated in this subrule are subject to tax.

18.33(3) Claim for refunds of tax, interest, or penalty paid for the period of July 1, 1983, to June 30, 1995, must be limited to $25,000 in the aggregate and will not be allowed unless filed prior to October 1, 1995. If the amount of claimed refunds for this period totals more than $25,000, the department must prorate the $25,000 among all claims.

701—18.34(422,423) Automatic data processing.

18.34(1) *In general.*

a. Applicability of tax. For the purposes of this rule, the tax on automatic data processing is applicable to the gross receipts of:

(1) Sales and rentals of data processing equipment (hardware).

(2) Sales and rentals of tangible personal property produced or consumed by data processing equipment or prewritten (canned) computer software used in data processing operations.

(3) Certain enumerated services performed on or connected with data processing such as rental of tangible personal property, machine repair, services of machine operators, office and business machines repair, electrical installation, and any other taxable service enumerated in Iowa Code section 422.43.

b. Definitions.

(1) *"Computer"* means a programmed or programmable machine or device having information processing capabilities and includes word processing equipment, testing equipment, and programmed or programmable microprocessors and any other integrated circuit embedded in manufactured machinery or equipment.

(2) *"Hardware"* means the physical computer assembly and peripherals including, but not limited to, such items as the central processing unit, keyboards, consoles, monitors, memory, disk and tape drives, terminals, printers, plotters, modems, tape readers, document sorters, optical readers and digitizers.

(3) *"Canned software"* is prewritten computer software which is offered for general or repeated sale or rental to customers with little or no modification at the time of the transaction beyond specifying the parameters needed to make the program run. Canned software is tangible personal property. The term also includes programs offered for general or repeated sale or rental which were initially developed as custom software. Evidence of canned software includes the selling or renting of the software more than once. Software may qualify as custom software for the original purchaser or lessor but is canned software with respect to all others. Canned software includes program modules which are prewritten and later used as needed for integral parts of a complete program.

(4) *"Custom software"* is specified, designed, and created by a vendor at the specific request of a customer to meet a particular need and is considered to be a sale of a service rather than a sale of tangible personal property. It includes those services represented by separately stated charges for the modification of existing prewritten software when the modifications are written or prepared exclusively for a customer. Modification to existing prewritten software to meet the customer's needs is custom computer programming only to the extent of the modification and only to the extent that the actual amount charged for the modification is separately stated. Examples of services that do not result in custom software include loading parameters to initialize program settings and arranging preprogrammed modules to form a complete program.

When the charges for modification of a prewritten program are not separately stated, tax applies to the entire charge made to the customer for the modified program unless the modification is so significant that the new program qualifies as a custom program. If the prewritten program before modification was previously marketed, the new program will qualify as a custom program if the price of the prewritten program was 50 percent or less of the price of the new program. If the prewritten program was not previously marketed, the new program will qualify as a custom program if the charge made to the customer for custom programming services, as evidenced by the records of the seller, was more than 50 percent of the contract price to the customer.

The department will consider the following records in determining the extent of modification to prewritten software when there is not a separate charge for the modification: logbooks, timesheets, dated documents, source codes, specifications of work to be done, design of the system, performance requirements, diagrams of programs, flow diagrams, coding sheets, error printouts, translation printouts, correction notes, and invoices or billing notices to the client.

(5) *"Storage media"* includes hard disks, compact disks, floppy disks, diskettes, diskpacks, magnetic tape, cards, or other media used for nonvolatile storage of information readable by a computer.

(6) *"Rental"* includes any lease or license agreement between a vendor and a customer for the customer's use of hardware or software.

(7) *"Program"* is interchangeable with the term "software" for purposes of this rule.

18.34(2) *Taxable sales, rentals and services.*

a. Sales of equipment. Tax applies to sales of automatic data processing equipment and related equipment.

b. Rental or leasing of equipment. Where a lease includes a contract by which a lessee secures for a consideration the use of equipment which may or may not be used on the lessee's premises, the rental or lease payments are subject to tax. See rule 701—26.18 on tangible personal property rental.

c. Canned software. The sale or rental for a consideration of any computer software which is not custom software is a transfer of tangible personal property and is taxable. Canned software may be transferred to a customer in the form of diskettes, disks, magnetic tape, or other storage media or by listing the program instructions on coding sheets.

(1) Tax applies whether title to the storage media on which the software is recorded, coded, or punched passes to the customer or the software is recorded, coded, or punched on storage media furnished by the customer. A fee for the temporary transfer of possession of canned software for the purpose of direct use to be recorded, coded, or punched by the customer or by the lessor on the customer's premises, is a sale or rental of canned software and is taxable.

(2) Tax applies to the entire amount charged to the customer for canned software. Where the consideration consists of license fees, royalty fees, right to use fees or program design fees, whether for a period of minimum use or for extended periods, all fees includable in the purchase price are subject to tax.

d. Training materials. Persons who sell or lease data processing equipment may provide a number of training services with the sale or rental of their equipment. Training services, per se, are not subject to tax. Training materials, such as books, furnished to the trainees for a specific charge are taxable.

e. Services a part of the sale or lease of equipment. Where services, such as programming, training or maintenance services, are provided to those who purchase or lease automatic data processing and related equipment, on a mandatory basis as an inseparable part of the sale or taxable lease of the equipment, charges for the furnishing of the services are includable in the measure of tax from the sale or lease of the equipment whether or not the charges are separately stated. (Where the purchaser or lessee has the option to acquire the equipment either with the services or without the services, charges for the services may not be excluded from the measure of tax if they are taxable enumerated services.)

f. Materials and supplies. The transfer of title, for a consideration, of tangible personal property, including property on which or into which information has been recorded or incorporated is a sale subject to tax.

Generally service bureaus are consumers of all tangible personal property, including cards and forms, which they use in providing services unless a separate charge is made to customers for the materials, in which case, tax applies to the charge made for the materials.

g. Additional copies. When additional copies of records, reports, tabulation, etc., are sold, tax applies to the charges made for the additional copies. "Additional copies" are all copies in excess of those produced on multipart carbon paper simultaneously with the production of the original and on the same printer, whether the copies are prepared by rerunning the same program, by using multiple simultaneous printers, by looping a program such that the program is run continuously, by using different programs to produce the same output product, or by other means. Where additional copies are prepared, the tax will be measured by the charge made by the service bureau to the customer. If no separate charge is made

for the additional copies, tax applies to that portion of the gross receipts which the cost of the additional computer time (if any) and the cost of materials and labor cost to produce the additional copies bear to the total job cost. Charges for copies produced by means of photocopying, multilithing, or by other means are subject to tax. Tax applies to a contract where data on magnetic tape are converted into combinations of alphanumeric printing, curve plotting or line drawings, and put on microfilm or photorecording paper.

h. Mailing lists. Addressing (including labels) for mailing. Where the service bureau addresses, through the use of its automatic data processing equipment or otherwise, material to be mailed, with names and addresses furnished by the customer or maintained by the service bureau for the customer, tax does not apply to the charge for addressing. Similarly, where the service bureau prepares, through the use of its automatic data processing equipment or otherwise, labels to be affixed to material to be mailed, with names and address furnished by the customer or maintained by the service bureau for the customer, tax does not apply to the charge for producing the labels, regardless of whether the service bureau itself affixes the labels to the material to be mailed. However, tax would be due on any tangible personal property, such as labels, consumed by the service bureau. (See *"f"* above.) Mailing lists in the form of Cheshire tapes, gummed labels, and heat transfers which are attached to envelopes and placed in the mail by a service bureau constitute tangible personal property and are subject to tax.

i. Services of a machine operator. The services of a machine operator, such as a key punch operator or the operator of any other data processing equipment, when hired to operate another person's machinery or equipment, are subject to tax when contracted for and performed by someone other than an employee of the owner of the machinery and equipment.

j. Maintenance contracts. Maintenance contracts sold in connection with the sale or lease of canned software generally provide that the purchaser will be entitled to receive storage media on which prewritten program improvements have been recorded. The maintenance contract may also provide that the purchaser will be entitled to receive certain services, including error corrections and telephone or on-site consultation services.

(1) Nonoptional maintenance contract. If the maintenance contract is required as a condition of the sale or rental of canned software, it will be considered as part of the sale or rental of the canned software, and the gross sales price is subject to tax whether or not the charge for the maintenance contract is separately stated from the charge for software.

(2) Optional maintenance contracts prior to July 1, 1998. If the maintenance contract is optional to the purchaser of canned software, then only the portion of the contract fee representing improvements delivered on storage media is subject to sales tax if the fee for other services, including consultation services and error corrections, is separately stated. If the fee for other services, including consultation services and error corrections, is not separately stated from the fee for improvements delivered on storage media, the entire charge for the maintenance contract is subject to sales tax.

(3) Optional maintenance contracts on and after July 1, 1998. If an optional software maintenance or support contract provides for technical support services only, then no tax is imposed on the gross receipts from the performance of those services. If an optional software maintenance or support contract separately states the charges which represent improvements delivered on storage media from charges which represent other services, including consultation services and error correction, then only that portion of the contract fee representing improvements delivered on the storage media is subject to sales tax. If an optional software maintenance or support contract provides for the taxable transfer of tangible personal property and the provision of nontaxable services, and there is no separately stated charge for the taxable transfer of property or for the nontaxable service, then state sales tax of 5 percent shall be imposed on 50 percent of the gross receipts from the sale of such contracts. See 701—paragraph 18.25(3)*"c"* for more information.

18.34(3) *Nontaxable items and activities.*

a. Custom programs. These are programs prepared to the special order of a customer. Tax does not apply to the transfer of custom programs in the form of written procedures, such as program instructions listed on coding sheets. Tax applies to the sale of material transferred to the customer in the form of typed or printed sheets if separately invoiced.

b. Processing a client's data. Generally speaking, if a person enters into a contract to process a client's data by the use of a computer program, or through an electrical accounting machine programmed by a wired plugboard, the processing of a client's data is nontaxable. Such contracts usually provide that the person will receive the client's source documents, record data in machine readable form, such as in punch cards or on magnetic tape, make necessary corrections, rearrange or create new information as the result of the processing and then provide tabulated listings or record output on other media. This service will be considered nontaxable even if the total charge is broken down into specific charges for each step. The furnishing of computer programs and data by the client for processing under direction and control of the person providing the service is nontaxable even though charges may be based on computer time. The true object of these contracts is considered to be a service, even though some tangible personal property is incidentally transferred to the client. However, tax will apply to tangible personal property separately invoiced to the client.

c. Time sharing. Charges made for the use of automatic data processing equipment, on a time-sharing basis, where access to the equipment is by means of remote facilities, are not subject to tax. Time sharing which is, in fact, a rental of equipment and the lessee exercises the right of possession or control over the equipment is subject to tax. See 18.34(2)*"b"* and rule 701—26.18(422).

d. Designing of systems, converting of systems, consulting, training, and miscellaneous services. These services consist of the developing of ideas, concepts and designs. Common examples of these nontaxable services are:

(1) Designing and implementing computer systems (e.g., determining equipment and personnel required and how they will be utilized).

(2) Designing storage and data retrieval systems (e.g., determining what data communications and high speed input-output terminals are required).

(3) Converting manual systems to automatic data processing systems, converting present automatic data processing systems to new systems (e.g., changing a second generation system to a third generation system).

(4) Consulting services (e.g., studies of all or part of a data processing system).

(5) Feasibility studies (e.g., studies to determine what benefits would be derived if procedures were automated).

(6) Evaluation of bids (e.g., studies to determine which manufacturer's proposal for computer equipment would be most beneficial).

(7) Providing technical help such as analysts and programmers, usually on an hourly basis.

(8) Writing (coding) and testing of programs—contract programming. These services result in the production of customized programs. This type of service is not taxable because programming requires the development or ascertainment of information, and the evaluation of data, in addition to other development skills.

Persons engaged in providing nontaxable computer services are the consumers of all tangible personal property used in such activities, and the tax must be paid on their acquisition of such property.

This paragraph, 18.34(3)*"d,"* shall become effective for periods beginning on or after April 1, 1992.

e. Installation charges. Where installation charges are separately contracted for or where no contract exists, are separately invoiced, or do not constitute enumerated taxable services, they are exempt from tax. See rule 701—15.14(422,423).

f. Pickup and delivery charges. The tax will not apply to pickup and delivery charges which are separately contracted for or where no contract exists, are separately invoiced.

g. Rental of computer programs. Prior to July 1, 1984, the rental of computer programs was not subject to tax since the program did not constitute equipment. *KTVO, Inc. vs. Bair,* 1977, Iowa 225 N.W.2d, 111. For the rule regarding prewritten (canned) programs subsequent to that date, see 18.3(2)*"c."*

This rule is intended to implement Iowa Code sections 422.42, 422.45 and 423.2 and Iowa Code Supplement section 422.43 as amended by 1998 Iowa Acts, Senate File 2288.

701—18.35(422,423) Drainage tile. The sale or installation of drainage tile which is to be used in disease control, weed control, or the health promotion of plants or livestock produced as part of agricultural production for market is exempt from tax. Drainage tile, when purchased for these purposes, is therefore not subject to tax. In all other cases, drainage tile will be considered a building material and subject to tax under the provisions of Iowa Code subsection 422.42(9).

This rule is intended to implement Iowa Code sections 422.42(3), 422.42(9), and 423.2.

701—18.36(422,423) True leases and purchases of tangible personal property by lessors.

18.36(1) *True leases and purchases by lessors prior to, on, and subsequent to July 1, 1978.* The definition of a sale specified in Iowa Code subsection 422.42(2) does not include leases. Hence, the exemption from tax on sales for resale is inapplicable to the purchase of tangible personal property for the purpose of leasing such property to others, but not for the purpose of reselling such property. *Cedar Valley Leasing, Inc. v. Iowa Department of Revenue,* 274 N.W.2d 357 (Iowa 1979). However, even though the general rule is that the acquisition cost of tangible personal property purchased for the purpose of leasing it to others is subject to the Iowa sales or use tax, certain transactions are exempted from tax by statute. See subrule 18.36(4).

18.36(2) *General.* Prior to July 1, 1984, tax is due on the lease or rental payments derived from the service of equipment rental only and not from the lease or rental of other tangible personal property. See 701—subrule 26.18(1). Tax would also be due on the gross receipts received on the disposal of the tangible personal property provided no exemption exists. When property is purchased for the purpose of financing under a conditional sales contract, the property is purchased for resale, and the acquisition of the property is not subject to Iowa tax. See rule 701—16.47(422,423).

The gross receipts from the leasing of property for subletting purposes is exempt from tax as a resale of a service, but the lessee must collect tax on the gross receipts from subletting unless such subletting is otherwise exempt from tax.

a. Where a resident or nonresident lessor leases equipment to a resident or nonresident lessee and the lease contract is executed in Iowa and the equipment is delivered to the lessee in Iowa, the rental payments are subject to Iowa sales tax, even if the equipment is taken by the lessee to another state. *Williams Rentals, Inc. v Tidwell,* 516 S.W.2d 614 (Tenn. 1974).

b. Where a nonresident lessor leases equipment to a resident or nonresident lessee and the lessee uses the equipment in Iowa, the nonresident lessor has the responsibility of collecting Iowa use tax on the lease payments, provided the lessor maintains a place of business in Iowa as provided in Iowa Code sections 423.1(6) and 423.9. Whether the lease agreement is executed in Iowa or not is irrelevant. *State Tax Commission v. General Trading Co.,* 322 U.S. 335, 64 S.Ct. 1028,88 L.Ed 1309, (1944).

c. Where a lessee is the recipient of equipment rental services as defined in *"a"* and *"b"* above and no tax has been collected from such lessee by the lessor, the lessee should remit Iowa use tax to the department of revenue. In the event no tax is remitted, the department, in its discretion, may seek to collect the tax from the lessor or lessee. In the event that the lessee is the recipient of equipment rental services, and the lessor does not maintain a place of business in Iowa and does not collect use tax pursuant to Iowa Code section 423.10, such lessee shall remit tax on its rental payments to the department.

d. Where a resident lessor leases equipment to a nonresident lessee outside of Iowa, and the equipment is delivered to the lessee outside Iowa, the act of leasing is exempt from the Iowa sales tax on the rental payments. However, in the event the lessee brings the equipment into Iowa and uses it in Iowa, Iowa use tax applies to rental payments, but see *"g"* below.

e. Where a resident or nonresident lessor purchases tangible personal property in Iowa for subsequent lease in or out of Iowa and takes delivery of the equipment in Iowa, the lessor's purchase is subject to Iowa sales tax. *Dodgen Industries, Inc. v. Iowa State Tax Commission,* 160 N.W.2d 289 (Iowa 1968).

f. When a resident or nonresident lessor purchases tangible personal property outside of Iowa for the purpose of leasing it in Iowa and the equipment is brought into Iowa and used by the resident or nonresident lessee in this state, the lessor is considered as having a "use" of the property in Iowa and Iowa use tax will apply to the lessor's purchase price of the property, regardless whether or not the lessor

makes any physical use of the property in Iowa. *Union Oil Company of California v. State Board of Equalization,* 1963, 34 Cal. Rpts. 872, 386 P.2d 496.

g. If a sales or use tax has already been paid to another state on the purchase price of equipment prior to the use of that equipment in Iowa, a tax credit against the Iowa use tax on the purchase price will be given. After the equipment is brought into Iowa, if a sales or use tax is properly payable and is paid to another state on the rental payments of equipment, for the same time the Iowa tax is imposed on such rentals, a tax credit against the Iowa use tax on such rental payments will be given. *Henneford v. Silas Mason Co.,* 1937, U.S.577, 57 S.Ct. 524, S1 L.Ed. 814.

18.36(3) *Leases relating to vehicles subject to registration.*

a. Vehicles as defined in Iowa Code subsections 321.1(4), (6), (8), (9), and (10) (motor trucks, truck tractors, road tractors, trailers, and semitrailers), except when designed primarily for carrying persons, can be purchased free of use tax when purchased for lease and actually leased for use outside Iowa if the subsequent sole use in Iowa is in interstate commerce or interstate transportation.

b. Tangible personal property which by means of fabrication, compounding, or manufacturing becomes an integral part of vehicles as defined in 18.36(3)*"a"* when manufactured for lease and actually leased to a lessee for use outside the state of Iowa, can be purchased free of use tax provided the sole subsequent use of the vehicle in Iowa is in interstate commerce or interstate transportation. (Iowa purchases which would be subject to Iowa sales tax do not qualify for this exemption.) See rule 701—33.7(423).

The provisions of *"a"* and *"b"* are effective for periods beginning on January 1, 1973. Also see 701—Chapter 34 of the rules relating to vehicles subject to registration.

18.36(4) *Special rules for lessors on or after July 1, 1978.* If tangible personal property is purchased for leasing, the purchase of the property is exempt from tax if the following conditions are met:

a. The person (lessor) purchasing the property is regularly engaged in the business of leasing,

b. The period of the lease is for more than one year for sales or property occurring from July 1, 1978, to May 18, 1997, inclusive; for sales of property occurring on and after May 19, 1997, the period of the lease must be for more than five months, and

c. The lease or rental receipts must be subject to tax under the service of equipment rental.

All three conditions must be met before the exemption applies.

If the exemption is properly claimed, it is lost when the property is made use of for any purpose other than leasing and the person claiming the exemption is liable for the tax based on the original purchase price. Tax paid on the leasing or rental payments would be allowed as a credit against the tax due on the purchase price.

In the following examples, assume, unless stated to the contrary, that the lease or rental receipts are subject to tax. The examples are written on the assumption that the period for an exempt lease is five months or longer. Thus, these examples are basically applicable to the period beginning May 19, 1997; however, the examples illustrate principles which are applicable to the purchase for lease exemption for periods longer than one year which was the requirements for exemption prior to May 19, 1997.

EXAMPLE: A restaurant makes a one-time purchase of office furniture which it leases to an insurance company for a period of four years. The purchase of office furniture by the restaurant would be subject to tax because the restaurant is not regularly engaged in the business of leasing. However, if the restaurant established a pattern of regularly purchasing office furniture or other tangible personal property for lease, the exemption would apply.

EXAMPLE: A company purchases a computer which will be leased for a period of three years, at which time the computer is returned to the company. The sole business of the company is to purchase this one computer for lease. The purchase of the computer is exempt from tax because the company is regularly engaged in the business of leasing.

EXAMPLE: A leasing company purchases three lawn mowers which will be leased to individuals for periods of time less than five months. The purchase of the lawn mowers by the leasing company would be subject to tax because the periods of the leases are for less than five months.

EXAMPLE: A leasing company purchases a computer which will be leased for a period of three years. The purchase of the computer is exempt from tax because the period of the lease is for more than five months.

EXAMPLE: A leasing company buys a computer. The company claims the exemption from tax, but the company uses the computer in its own operations. Tax is due on the original purchase price and the leasing company is liable for the tax due.

EXAMPLE: A leasing company purchases a copying machine which will be leased for a period of two years. After four months, the machine is returned to the leasing company and then the machine is immediately re-leased without being used by the leasing company for any other purpose. The exemption would apply because it was properly claimed and nothing occurred to cause loss of the exemption.

EXAMPLE: A leasing company purchases a copying machine which will be leased for a period of two years. After four months, the machine is returned and the leasing company then uses the machine in its own business. The exemption would no longer apply and the leasing company would be liable for the tax based on the original purchase price. Credit would be allowed against the tax due on the purchase price for any tax paid on the lease or rental payments. Assume the leasing company paid $2,000 for the copying machine and charged $200 per month plus $10 in tax per month. Since the machine is returned and the exemption is not applicable, the leasing company would owe $100 on the $2,000 acquisition cost. However, the leasing company collected $40 (four months x $10) tax on the monthly rental charges. Allowing the credit for tax collected of $40 against the total tax liability of $100 leaves a net tax liability of $60 owed by the leasing company.

EXAMPLE: A manufacturer and seller of office furniture also leases office furniture. The leases always run for a period longer than five months and the company usually has only two leases per year. The leasing operation only accounts for 1 percent of the company's total business. The company still qualifies for the exemption because it is regularly engaged in the business of leasing and the period of the lease is for more than five months.

EXAMPLE: A leasing company purchases an airplane from an aircraft dealer and leases it for a period of three years. The lease or rental payments are not taxed because of the exemption for transportation services. The leasing company would owe tax based on the acquisition cost because the lease or rental payments are not subject to tax under the service of equipment rental.

EXAMPLE: A leasing company purchases equipment and leases it to a lessee for a period of 18 months. For the first 3 months, the equipment is used by the lessee in making repairs to existing structures and the lease receipts are taxable. For the remainder of the lease period, the equipment is used in new construction of buildings and structures and the lease receipts are exempt from tax. The acquisition cost of the equipment is exempt because the exemption was properly claimed and was not subsequently lost by a use other than leasing.

EXAMPLE: A leasing company purchases from an Iowa retailer equipment on May 18, 1997, for the purpose of leasing it for a period of six months. The lease receipts will be taxable. The sales tax exemption on the acquisition cost to the lessor cannot be claimed because the sale occurred before May 19, 1997, and, at the time of the sale, no sales tax exemption applied to such acquisition cost. The exemption for acquisition cost should not be given a retroactive effect. *Jones v. Gordy*, 1935, 169 Md. 173, 180 Atl. 272.

EXAMPLE: A leasing company purchases equipment outside of Iowa on May 1, 1997. The lessee brings the equipment into Iowa on June 1, 1997, and uses it in Iowa. The lease period is nine months, and the lessee's use in Iowa is subject to Iowa use tax on the lease payments. Under these circumstances, the Iowa use tax exemption on the lessor's acquisition cost applies because it is the law in effect at the time of use in Iowa, not at the time of sale, which determines whether a use tax exemption applies. *City of Ames v. Iowa State Tax Commission,* 1955, 246 Iowa 1016, 71 N.W.2d 15; *Allis-Chalmers Mfg. Co. v. Iowa State Tax Commission,* 1958, 250 Iowa 193, 92 N.W.2d 129.

EXAMPLE: A leasing company purchases equipment not for resale and leases it to the lessee for a period of more than five months. After three months, the equipment is returned to the leasing company which then sells the equipment. Such sale is not part of the regular course of the leasing company's business. The exemption, though properly claimed, is lost because, by reason of such sale, the leasing

company made use of the property for a purpose other than leasing or renting. Had the equipment been returned to the leasing company on or after five months and one day from the commencement of the lease period, and the leasing company then sold the equipment outside the regular course of its business or used the equipment in its business, the exemption for acquisition cost would not be lost. Had the equipment been purchased for resale and leased prior to such resale, the acquisition cost to the leasing company would be exempt from tax. *Herman M. Brown Co. v. Johnson,* 1957, 248 Iowa 1143, 82 N.W.2d 134. If the equipment is traded in toward the purchase price of other equipment by the leasing company, or if the leasing company disposes of the equipment after it is fully depreciated, the exemption for acquisition cost is not lost. Where sale of equipment outside the regular course of business is made by the leasing company, see also rule 18.28(422) to determine whether the casual sale exemption applies to the receipts from such sale.

EXAMPLE: A leasing company purchases equipment which is leased to the lessee. Assume that the exemption for acquisition cost of the equipment was properly claimed. Thereafter, the lessee makes an assignment of the lease. The exemption is not lost since the assignee stands in the same position as the original lessee and such an assignment does not change the nature of the original lease period. *Berg v. Ridgway,* 1966, 258 Iowa 640, 140 N.W.2d 95.

EXAMPLE: A leasing company purchases equipment which is leased to the lessee in accordance with the criteria creating the acquisition cost exemption. The leasing company sells the lease contracts, as commercial paper, to others. The exemption for acquisition cost can still be claimed and such sales of lease contracts do not cause loss of the exemption.

EXAMPLE: A leasing company purchases equipment which is leased to the lessee in accordance with the criteria creating the acquisition cost exemption. Thereafter, the lease can no longer be performed because the property is destroyed by an act of God. The acquisition cost exemption is not lost.

EXAMPLE: A leasing company purchases equipment which is leased to the lessee in accordance with the criteria creating the acquisition cost exemption. Thereafter, the lessee is adjudged bankrupt and the equipment is returned to the leasing company and is re-leased without being used by the leasing company for any other purpose. The acquisition cost exemption is not lost since the leasing company makes no use for any purpose other than leasing or renting.

EXAMPLE: A leasing company purchases equipment which is leased to a lessee. The criteria for the acquisition cost exemption are present. The lessee then sublets the equipment to another for a period less than five months. The acquisition cost exemption is not lost.

18.36(5) *Lease or rental of all tangible personal property now subject to tax.* On and after July 1, 1984, the lease or rental of all tangible personal property is subject to tax. See rule 701—26.18(422) for information concerning additional transactions subject to tax after that effective date.

This rule is intended to implement Iowa Code sections 422.42(2), 422.43, 422.45, 423.1, and 423.4.

701—18.37(422,423) Motor fuel, special fuel, aviation fuels and gasoline.

18.37(1) *In general.* The gross receipts from the sale of motor fuel and special fuel are exempt from sales tax under Iowa Code section 422.45(11) if (1) the fuel is consumed for highway use, in watercraft, or in aircraft, (2) the Iowa fuel tax has been imposed and paid, and (3) no refund or credit of fuel tax has been made or will be allowed. However, beginning July 1, 1985, the gross receipts from the sale of special fuel for diesel engines used in commercial watercraft on rivers bordering Iowa are exempt from sales tax, even though no fuel tax has been imposed and paid, providing the seller delivers the fuel to the owner's watercraft while it is afloat. Prior to July 1, 1988, retail sales of aviation gasoline were not exempt from sales tax under Iowa Code subsection 422.45(11). See subrule 18.37(4).

18.37(2) *Refunds or credits of motor fuel and special fuel.* Claims for refund or credit of fuel taxes under the provisions of Iowa Code chapter 452A must be reduced by any sales or use tax owing the state unless a sales tax exemption is applicable. Generally, refund claims or credits are allowed where fuel is purchased tax paid and used for purposes other than to propel a motor vehicle or used in watercraft.

18.37(3) *Refunds of tax on fuel purchased in Iowa and consumed out of Iowa.* Even though fuel is purchased in Iowa, fuel tax paid in Iowa, and the fuel tax is subject to refund under the provisions of division III of Iowa Code chapter 452A relating to interstate motor vehicle operations, the refund of

the fuel tax does not subject the purchase of the fuel to sales tax. Subjecting the purchase to sales tax has the effect of imposing sales tax when fuel is consumed in interstate commerce while fuel consumed on Iowa highways in intrastate commerce is exempt from sales tax pursuant to Iowa Code subsection 422.45(11). The effect for sales tax purposes is to impose a greater tax burden on non-Iowa highway fuel consumption than Iowa highway fuel consumption thereby discriminating against interstate commerce. In addition, the effect of imposing sales tax on interstate excess purchases where intrastate highway use is not subject to the tax constitutes an export duty for purchasing fuel in Iowa and exporting it for use in another state. Such effects are in violation of the commerce clause of the United States Constitution. *Boston Stock Exchange v. State Tax Commission,* 1977, 429 U.S. 319, 97 S.Ct. 599,50 L.Ed.2d 514 and *Coe v. Errol,* 1886, 116 U.S. 517, 6 S.Ct. 475, 29L.Ed. 715.

18.37(4) *Aviation gasoline.* Tax treatment prior to July 1, 1988. Prior to July 1, 1988, all Iowa fuel tax paid on aviation gasoline used in aircraft was refundable under Iowa Code section 452A.17. Generally, aviation gasoline is not purchased for highway use or for use in watercraft, therefore, the exemption from sales and use tax found in Iowa Code subsection 422.45(11) was generally not applicable to purchases of aviation gasoline. However, Iowa Code subsection 422.52(4) provides for the collection of sales tax by way of deduction from motor fuel tax refunds allowable under Iowa Code chapter 452A. Therefore, sales tax is not assessed at the retail level but only in instances where the fuel tax paid on aviation gasoline has been refunded. If no application for a fuel tax refund relating to aviation fuel has been made, no sales tax is assessed on the aviation gasoline purchase.

18.37(5) *Ethanol.* For tax periods after April 30, 1981. Retail sales of ethanol are exempt from Iowa sales or use tax.

18.37(6) *Tax base.* The basis for computing the Iowa sales tax will be the retail selling price of the fuel less any Iowa fuel tax included in such price. Federal excise tax should not be removed from the selling price in determining the proper sales tax due. *W.M. Gurley v. Arny Rhoden* supra. Also see rule 701—15.12(422,423).

This rule is intended to implement Iowa Code sections 422.31, 422.43, 422.45(11), 422.45(22), 422.52(4), 423.1, 452A.3, and 452A.17.

701—18.38(422,423) Urban transit systems. A privately owned urban transit system which is not an instrumentality of federal, state or county government is subject to sales tax on fuel purchases which are within the urban transit systems charter.

Tax shall not apply to fuel purchases, made by a privately owned urban transit company, for use outside the urban transit system charter in which a fuel tax has been imposed and paid and no refund has been or will be allowed.

Whether an urban transit company will be considered an instrumentality of federal, state or county government for the purpose of receiving sales tax exemption on its fuel purchases, which are also exempted from fuel tax and used for public purposes, depends upon consideration of the following:

1. Whether it is created by government.
2. Whether it is wholly owned by government.
3. Whether it is operated for profit.
4. Whether it is primarily engaged in the performance of some essential governmental function.
5. Whether the payment of tax will impose an economic burden upon the corporation, or that payment of tax serves to materially impair the usefulness or efficiency of the corporation or the payment of tax materially restricts the corporation in the performance of its duties.

These above enumerated considerations are not all inclusive and the presence of some and absence of others does not necessarily establish the exemption. *Unemployment compensation of North Carolina v. Wachovia Bank and Trust Company,* 2 S.E.2d 592, 595, 215 No. Car. 491 (1939); 1976 O.A.G. 823, 827, 828.

This rule is intended to implement Iowa Code subsection 422.45(1).

701—18.39(422,423) Sales or services rendered, furnished, or performed by a county or city. The gross receipts from the sales, furnishing, or service of gas, electricity, water, heat, and communication

service rendered, furnished, or performed by a county or city are subject to the tax. On and after July 1, 1985, the gross receipts from fees paid to cities and counties for the privilege of participating in any athletic sports are also subject to tax. On or after July 1, 1991, the gross receipts from any municipally owned pay television service are taxable as well. On and after April 1, 1992, the gross receipts from a county or municipality furnishing sewage service or solid waste collection and disposal service to nonresidential commercial operations are taxable (see rules 701—26.71(422,423) and 26.72(422,423) for more information).

Any other sales or services rendered, furnished, or performed by a county or city are not subject to the tax.

A "sport" is any activity or experience which involves some movement of the human body and gives enjoyment or recreation. An "athletic" sport is any sport which requires physical strength, skill, speed, or training in its performance. The following activities are nonexclusive examples of athletic sports: baseball, football, basketball, softball, volleyball, golf, tennis, racquetball, swimming, wrestling, and foot racing.

The following is a list of various fees which would be considered fees paid to a city or county for the privilege of participating in any athletic sport, and thus subject to tax under this rule. The list is not exhaustive.

1. Fees paid for the privilege of using any facility specifically designed for use by those playing an athletic sport: fees for use of a golf course, ball diamond, tennis court, swimming pool, or ice skating rink are subject to tax. These fees are subject to tax whether they allow use of the facility for a brief or extended period of time, e.g., a daily fee or season ticket for use of a swimming pool or golf course would be subject to tax. Group rental of facilities designed for playing an athletic sport would also be subject to tax.

2. Fees paid to enter any tournament or league which involves playing an athletic sport would be subject to tax. Both team and individual entry fees are taxable. Fees paid to enter any marathon or foot race of shorter duration would be subject to tax under this rule.

Not subject to tax as fees paid to a city or county for the privilege of participating in any athletic sport under this rule are the following charges. The list is not intended to be exhaustive.

1. Fees paid for lesson or instruction in how to play or to improve one's ability to play an athletic sport are not subject to tax. Golf and swimming lesson fees are specific examples of such nontaxable charges. The fees are excluded from tax regardless of whether the person receiving the instruction is a child or an adult. Fees charged for equipment rental, regardless of whether this equipment is helpful or necessary to participation in an athletic sport, are not subject to tax. The rental of a golf cart or moveable duck blind would not be subject to tax. The rental of a recreational boat is a transportation service, the gross receipts of which are not subject to tax if provided by a city or county.

2. Sales of merchandise, e.g., food or drink, to persons watching or participating in any athletic sport are not subject to tax.

3. Fees charged to improve any facility where any athletic sport is played are not subject to tax, unless such a fee must be paid to participate in an athletic sport which can be played within the facility.

4. Fees paid by any person or organization to rent any county or city facility or any portion of any county or city park shall not be subject to tax unless the portion of the park or facility is specifically designed for the playing of an athletic sport.

EXAMPLE: A local bridge club pays a fee to use a shelter house and the surrounding grounds at a county park for a picnic. During the course of the picnic, the club members set up a net and use the surrounding grounds to play volleyball. They also improvise a softball field and play a softball game there. The fee which the bridge club has paid to rent the shelter house and surrounding grounds would not be subject to tax.

5. Fees paid for the use of a campground or hiking trail are not subject to tax.

This rule is intended to implement Iowa Code sections 422.43 and 422.45.

701—18.40(422,423) Renting of rooms. The gross receipts from the renting of any and all rooms, including but not limited to sleeping rooms, banquet rooms or conference rooms in any hotel, motel,

inn, public lodging house, rooming or tourist court, or in any place where sleeping accommodations are furnished to transient guests, whether with or without meals, are subject to the tax. The rental of a mobile home or of manufactured housing which is tangible personal property is treated as room rental rather than tangible personal property rental. The renting of all rooms would be exempt from the tax if rented by the same person for a period of more than 31 consecutive days. The renter must contract to rent for a single period of 31 days or more. The renter may not accumulate these 31 days by contracting for two or more rental transactions. The incremental manner in which the hotel, motel, inn, public lodging house, rooming or tourist court, or any place where sleeping accommodations are furnished to transient guests bills its customers does not influence the accumulation of days that is required to claim the exemption.

This rule is intended to implement Iowa Code section 422.43.

701—18.41(422,423) Envelopes for advertising.

18.41(1) Some envelopes which contain advertising are exempt from tax. Envelopes which are not primarily used for advertising are taxable. The primary use of the envelopes should control whether they will be taxable or exempt. *Iowa Movers and Warehouseman's Assn. v. Briggs,* 237 N.W.2d 759 (Iowa 1976).

EXAMPLE 1: XYZ mails coupons and advertisements to persons giving discounts on a certain item which is sold at retail. The envelope used to package these materials is exempt from tax since it is primarily used to contain advertising materials.

EXAMPLE 2: XYZ mails a monthly billing statement to its charge account customers. In addition to the billing statement, XYZ Company encloses an advertisement in the envelope. The envelope has a dual purpose: (1) the collection of accounts receivable and (2) the distribution of advertising. However, the envelope is not primarily used for advertising but for billing the customer, therefore, the exemption does not apply.

18.41(2) Because of the difficulty of administering this exemption, purchasers of envelopes may petition to the department for permission to use a formula to represent to the seller the portion of taxable and exempt gross receipts from envelope purchases.

This rule is intended to implement Iowa Code subsection 422.45(9).

701—18.42(422,423) Newspapers, free newspapers and shoppers' guides.

18.42(1) *General observations.* The gross receipts from the sales of newspapers, free newspapers, and shoppers' guides are exempt from tax. The gross receipts from the sales of magazines, newsletters, and other periodicals which are not newspapers are taxable. Recent cases decided by the United States Supreme Court and the Supreme Court of Iowa prohibit exempting from taxation the sale of any periodical if that exemption from taxation is based solely upon the contents of that periodical. See *Arkansas Writers' Project, Inc. v. Ragland,* 481 U.S. 221, 107 S.Ct. 1722, 95 L.Ed.2d 209 (1987) and *Hearst v. Iowa Department of Revenue & Finance,* 461 N.W.2d 295 (Iowa 1990).

18.42(2) *General characteristics of a newspaper.* "Newspaper" is a term with a common definition. A "newspaper" is a periodical, published at short, stated, and regular intervals, usually daily or weekly. It is printed on newsprint with news ink. The format of a newspaper is that of sheets folded loosely together without stapling. A newspaper is admitted to the U.S. mails as second-class material. Other frequent characteristics of newspapers are the following:

a. Newspapers usually contain photographs. The photographs are more often in black and white rather than color.

b. Information printed on newspapers is usually contained in columns on the newspaper pages.

c. The larger the cross section of the population which reads a periodical in the area where the periodical circulates, the more likely it is that the department will consider that periodical to be a "newspaper."

18.42(3) *Characteristics of newspaper publishing companies.* Companies in the business of publishing newspapers are differently structured from other companies. Often, companies publishing larger newspapers will subscribe to various syndicates or "wire services." A larger newspaper will employ a general editor and a number of subordinate editors as well, for example, sports and lifestyle

editors; business, local, agricultural, national, and world news editors; and editorial page editors. A larger newspaper will also employ a variety of reporters and staff writers. Smaller newspapers may or may not have these characteristics or may consolidate these functions.

18.42(4) *Characteristics which distinguish a newsletter from a newspaper.* A "newsletter" is generally distributed to members or employees of a single organization and not usually to a large cross section of the general public. It is often published at irregular intervals by a volunteer, rather than the paid individual who usually publishes a newspaper. A newsletter is often printed on sheets which are held together at one point only by a staple, rather than folded together.

This rule is intended to implement Iowa Code section 422.45(9).

701—18.43(422,423) Written contract. On and after July 1, 1985, the gross receipts from certain additional services are subject to tax. However, these newly taxable services are exempt from tax if performed pursuant to a written services contract in effect on April 1, 1985. The exemption from taxation for these services expires June 30, 1986. The services to which this "written contract" exemption is applicable are the following: cable television; campgrounds; gun repair; janitorial and building maintenance or cleaning; lawn care, landscaping and tree trimming and removal; lobbying service; pet grooming; reflexology; security and detective services; tanning beds or salons; water conditioning and softening; the rental of recreational vehicles, recreational boats or motor vehicles subject to registration which are registered for a gross weight of 13 tons or less; and fees paid to cities and counties for the privilege of participating in any athletic sports.

A "written contract" is one which is entirely in writing, so that all of its essential terms and provisions exist in writing, and oral statements are not necessary to set out any essential term or provision, such as who the parties to the contract are or what their rights and duties are under the contract. However, if it is necessary to resort to oral statements to explain the meaning of a written provision in a contract, a "written contract" can still exist. A written contract need not consist of one document or instrument only. It can consist of two or more writings, if all the necessary provisions of the contract are contained in those writings. For the purposes of this rule, the following must be stated in writing if a written contract is to exist: The nature and specification of the service to be provided, the name of the party providing the service, the name of the party receiving the service, the "consideration" (amount and method of payment) for providing the service, the signature of one or both of the parties to the contract, depending upon circumstances, and the date upon which the contract became effective.

The written contract must be in effect on April 1, 1985, if the service to which the contract pertains is to be exempt from tax. If a contract is signed by only one of the parties to it, that contract is still a "written contract" if the party which has not signed the contract acquiesces in the promises which the party who has signed the document makes within it. *McDermott v. Mahoney,* 139 Iowa 292, 115 N.W. 32, (Iowa 1908).

EXAMPLE: A security agency sends a proposed agreement to a potential customer promising to provide the services of a uniformed security guard for the customer's business premises beginning March 15, 1985, and continuing until March 15, 1987. The agreement is signed by the security agency's president and dated February 15, 1985. The agreement is received by the potential customer's president, who does not sign it, but, on March 15, 1985, allows the security agency's uniformed guard on the premises, and makes payment for those services as stipulated in the agreement. This agreement is a "written contract"; the services of the uniformed guard are not subject to tax for the period beginning July 1, 1985, and ending June 30, 1986. The services performed between July 1, 1986, and March 15, 1987, would be subject to tax.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—18.44(422,423) Sale or rental of farm machinery and equipment. On and after July 1, 1987, the gross receipts from the sale or rental of farm machinery and equipment will be exempt from tax. Effective July 1, 1996, the gross receipts from the sale of property which is a container, label, carton, pallet, packing case, wrapping, baling wire, twine, bag, bottle, shipping case or other similar article or receptacle sold for use in agricultural, livestock or dairy production are not subject to sales tax.

18.44(1) *Characteristics of and limitations upon farm machinery and equipment.* To be eligible for exemption from or refund of tax under this rule the machinery or equipment must:

a. Be directly and primarily used in production of agricultural products; and

b. Be one of the following:

(1) A self-propelled implement; or

(2) An implement customarily drawn or attached to a self-propelled implement; or

(3) A grain dryer; or

(4) An auxiliary attachment which improves the performance, safety, operation, or efficiency of a qualifying implement or grain dryer if sale or first use in Iowa is on or after July 1, 1995; or

(5) A replacement part for any item described in subparagraph (1), (2), (3), or (4).

(6) Effective July 1, 1996, the gross receipts from the sale of property which is a container, label, carton, pallet, packing case, wrapping, baling wire, twine, bag, bottle, shipping case, or other similar article or receptacle sold for use in agricultural, livestock or dairy production.

c. No vehicle subject to registration, as defined in Iowa Code subsection 423.1(7), implement customarily drawn or attached to a vehicle, auxiliary attachment, or any replacement part for a vehicle, implement, or auxiliary attachment is eligible for the exemption or refund allowed under this rule.

18.44(2) *Definitions and characterizations.* For the purposes of this rule, the following definitions apply.

a. Production of agricultural products means the same as the term "agricultural production" which is defined in 701—subrule 17.9(3), paragraph *"a,"* to mean a farming operation undertaken for profit by raising crops or livestock. Production of agricultural products begins with the cultivation of land previously cleared for planting of crops or with the purchase or breeding of livestock or domesticated fowl. Not included within the meaning of the phrase are the clearing or preparation of previously uncultivated land, the creation of farm ponds or the erection of machine sheds, confinement facilities, storage bins or other farm buildings. See *Trullinger v. Fremont County,* 223 Iowa 677, 273 N.W. 124 (1937). Machinery and equipment used for these purposes would be used for activities which are preparatory to but not a part of the production of agricultural products. The production of agricultural products ceases when an agricultural product has been transported to the point where it will be sold by the farmer or processed.

EXAMPLE. Farmer Brown uses a tractor and wagon to haul harvested corn from a field to a grain dryer located on the farm. After the corn is dried, the same tractor and wagon are used to move the grain to a storage bin, also located on the farm. Later the same tractor and wagon are used to deliver the corn from the farm to the local elevator where it is sold. After Farmer Brown deposits the corn there, the local elevator uses its own tractor and wagon to move the corn to a place of relatively permanent storage. Farmer Brown has used the tractor and wagon in the production of agricultural products and the refund or exemption would apply. The elevator has not used its tractor and wagon in such production; refund or exemption would not be lawful.

b. Farm machinery and equipment means machinery and equipment specifically designed for use in the production of agricultural products or equipment and machinery not specifically designed for this use but which are directly and primarily used in the production of agricultural products.

EXAMPLE. Farmer Jones raises livestock and the farming operation requires that fences be built to confine the livestock. Farmer Jones purchases a posthole digger that is customarily attached to a tractor and uses the digger to construct the fences used to confine the livestock. The posthole digger is not specifically designed for use in the production of agricultural products but would be directly and primarily used in the production of agricultural products. Therefore, the exemption or refund applies.

c. Self-propelled implement has the same meaning as in 701—subrule 17.9(5), paragraph *"c,"* where the term is defined to mean an implement which is capable of movement from one place to another under its own power. The term self-propelled implement includes but is not limited to the following items: skidloaders and tractors; and the following machinery if capable of movement under its own power: combines, corn pickers, fertilizer spreaders, hay conditioners/windrowers, sprayers, and bean buggies.

d. Implements customarily drawn or attached to self-propelled implements. The following is a nonexclusive, representative list of implements which are customarily drawn or attached to self-propelled implements: Augers, balers, blowers, combines, conveyers, cultivators, disks, drags, dryers (portable), farm wagons, feeder wagons, fertilizer spreaders, front- and rear-end loaders, harrows, hay loaders, mowers and rakes, husking machines, manure spreaders, planters, plows, rotary blade mowers, rotary hoes, sprayers and tanks, and tillage equipment.

e. Direct use in agricultural production. In determining whether farm machinery, equipment or any grain dryer is directly used in agricultural production, the fact that particular machinery or equipment is essential to the production of agricultural products because its use is required either by law or practical necessity does not, of itself, mean that the machinery or equipment is directly used in the production of agricultural products. Machinery or equipment coming into actual physical contact with the soil or crops during the operations of planting, cultivating, harvesting, and soil preparation will be presumed to be machinery or equipment used in agricultural production.

f. Grain dryer. The term grain dryer includes the heater and the blower necessary to force the warmed air into a grain storage bin. It does not include equipment used in grain storage or movement such as augers and spreaders or any other equipment that is not a grain dryer. Equipment other than a grain dryer which is used in grain drying may be exempt or subject to refund if the equipment is a self-propelled implement or customarily drawn or attached to a self-propelled implement.

g. Replacement parts, differing meanings of the term for the period ending June 30, 1988, and for the period beginning July 1, 1988.

(1) For the period beginning July 1, 1985, and ending June 30, 1988, a replacement part is refundable or exempt only if its cost is depreciable for state and federal income tax purposes. Replacement parts which are depreciable for state and federal income tax purposes include only those replacement parts which either materially add to the value of machinery or equipment or appreciably prolong its life. Replacement parts which only keep the machinery or equipment in its ordinarily efficient operating condition are not eligible for exemption or refund. Included within the meaning of replacement parts is any part the cost of which is depreciable for state and federal income tax purposes but which may also be deducted as a current expense. So long as the cost is depreciable the sale or lease of the replacement part is eligible for refund or exemption from tax. However, the person claiming the refund or exemption must show that the replacement part which was deducted as an expense could have been depreciated under state and federal income tax law.

(2) On and after July 1, 1988, the sale or lease of a replacement part is exempt from tax if the replacement part is essential to any repair or reconstruction necessary to farm machinery or equipment's exempt use in the production of agricultural products. The term "replacement part" does not include attachments and accessories which are not essential to the operation of the farm machinery or equipment. Nonexclusive examples of attachments or accessories are: cigarette lighters, radios, and add-on air-conditioning units.

18.44(3) *Taxable and nontaxable transactions.* The following are nonexclusive examples of sales and leases of farm machinery and equipment which are or are not subject to exemption and refund.

a. A lessor's purchase of farm machinery and equipment is not subject to tax, or is taxable subject to refund, if the machinery or equipment is leased to a lessee who uses it directly and primarily in the production of agricultural products and if the lessee's use of the machinery or equipment is otherwise exempt or subject to refund. To claim exemption from tax or a refund of tax paid, the lessor need not make exempt use of the machinery or equipment so long as the lessee does.

b. To claim refund or exemption, the owner or lessee of farm machinery or equipment need not be a farmer so long as the machinery and equipment is directly and primarily used in the production of agricultural products, and the owner or lessee and the equipment or machinery meet the other requirements of this rule. For example, a person who purchases an airplane designed for use in agricultural aerial spraying and so used after purchase is entitled to the benefits of this rule even though that person is not the owner or occupant of the land where the airplane is used.

c. The sale or lease, within Iowa, of any farm machinery, equipment, or replacement part for direct and primary use in agricultural production outside of Iowa is a transaction eligible for refund or exemption if those transactions are otherwise qualified under this rule.

18.44(4) *Auxiliary attachments.* The following is a list (not inclusive) of auxiliary attachments described in 18.44(1)*"b"*(4), the sale or first use in Iowa which is exempt from tax on and after July 1, 1995: auxiliary hydraulic valves, cabs, coil tine harrows, corn head pickup reels, dry till shanks, dual tires, extension shanks, fenders, fertilizer attachments and openers, fold kits, grain bin extensions, herbicide and insecticide attachments, kit wraps, no-till coulters, quick couplers, rear wheel assists, rock boxes, rollover protection systems, rotary shields, stalk choppers, step extensions, trash whips, upperbeaters, silage bags, and weights.

18.44(5) and **18.44(6)** Rescinded IAB 9/7/88, effective 10/12/88.

This rule is intended to implement Iowa Code subsections 422.43(3) and 422.45(26), Iowa Code chapter 422, Division IV, and Iowa Code section 422.45 as amended by 1996 Iowa Acts, chapter 1145.

701—18.45(422,423) Sale or rental of computers, industrial machinery and equipment; refund of and exemption from tax paid for periods prior to July 1, 1997. The sale or rental of computers, industrial machinery and equipment, including pollution control equipment, used in manufacturing, in research and development, or in the processing or storage of data or information by an insurance company, financial institution, or commercial enterprise is, under certain circumstances, exempt from tax and, under other circumstances, is subject to refund of sales or use tax paid. The sale or rental of machinery, equipment, or computers directly and primarily used in the recycling or reprocessing of waste products is also exempt from tax; see subrule 18.45(8). For purposes of the organization of this rule, items that may be exempt or subject to refund of tax are referred to as specified property unless the context of the rule indicates otherwise. See subrule 18.45(1) for definition of what constitutes specified property. See rule 18.58(422,423) for the manner in which the sale or rental of machinery, equipment, and computers to manufacturers and the sale or rental of computers to commercial enterprises are treated on and after July 1, 1997.

18.45(1) *Definitions.* The following words are defined for the purposes of this rule in the manner set out below.

"Commercial enterprise" includes businesses and manufacturers conducted for profit and includes centers for data processing services to insurance companies, financial institutions, businesses, and manufacturers, but excludes professions and occupations and nonprofit organizations. A hospital that is a not-for-profit organization would not be a "commercial enterprise." The term "professions" means a vocation or employment requiring specialized knowledge and often long and intensive academic preparation. The term "occupations" means the principal business of an individual. Included within the meaning of "occupations" is the business of farming. A professional corporation which carries on any business which is a "profession" or "occupation" is not a commercial enterprise.

"Computer" means stored program processing equipment and all devices fastened to it by means of signal cables or any communication medium that serves the function of a signal cable. Nonexclusive examples of devices fastened by a signal cable or other communication medium are: terminals, printers, display units, card readers, tape readers, document sorters, optical readers, and card or tape punchers. Excluded from the definition of "computer" is point-of-sale equipment. For a characterization of "point-of-sale equipment" see 701—subrule 71.1(7).

Also included within the meaning of the word "computer" is any software consisting of an operating system or executive program. Such software coordinates, supervises, or monitors the basic operating procedures of a computer. An operating system or executive program is exempt from sales tax only if purchased as part of the sale of the computer for which it operates. An operating system or executive program priced separately or sold at a later time is subject to the provisions of rule 18.34(422,423). Excluded from the meaning of the word "computer" is any software consisting of an application program. For purposes of this subrule, "operating system or executive program" means a computer program which is fundamental and necessary to the functioning of a computer. The operating system or executive program software controls the operation of a computer by managing the allocation of

all system resources, including the central processing unit, main and secondary storage, input/output devices, and the processing of programs. This is in contrast to application software which is a collection of one or more programs used to develop and implement the specific applications which the computer is to perform, and which calls upon the services of the operating system or executive program.

"Directly used." Property is "directly used" only if it is used to initiate, sustain, or terminate the transformation of any activity. In determining whether any property is "directly used," consideration should be given to the following factors:

1. The physical proximity of the property in question to the activity in which it is used;
2. The proximity of the time of use of the property in question to the time of use of other property used before and after it in the activity involved; and
3. The active causal relationship between the use of the property in question and the activity involved. The fact that a particular piece of property may be essential to the conduct of the activity because its use is required either by law or practical necessity does not, of itself, mean that the property is directly used.

"Financial institution" is a bank incorporated under Iowa Code chapter 524 or federal law; a savings and loan association incorporated under Iowa Code chapter 534 or federal law; a credit union organized under Iowa Code chapter 533 or federal law; or any corporation licensed as an industrial loan company under Iowa Code chapter 536A. Excluded from the meaning of the term are loan brokers governed by Iowa Code chapter 535C and production credit associations.

"Industrial machinery and equipment" means machinery and equipment used by a manufacturer in a manufacturing establishment. Machinery is any mechanical, electrical or electronic device designed and used to perform some function and to produce a certain effect or result. The word includes not only the basic unit of the machinery but also any adjunct or attachment necessary for the basic unit to accomplish its intended function. The word also includes all devices used or required to control, regulate or operate a piece of machinery, provided such devices are directly connected with or are an integral part of the machinery and are used primarily for control, regulation or operation of machinery. Jigs, dies, tools, and other devices necessary to the operation of or used in conjunction with the operation of what would be ordinarily thought of as machinery are also considered to be "machinery." See *Deere Manufacturing Co. v. Zeiner,* 247 Iowa 1264 78 N.W.2d 527 (1956). Machinery does not include buildings designed specifically to house or support machinery. Equipment is any tangible personal property used in an operation or activity. Nonexclusive examples of equipment are: tables on which property is assembled on an assembly line and chairs used by assembly line workers.

"Insurance company" means an insurer organized or operating under Iowa Code chapter 508, 514, 515, 518, 519, or 520 or authorized to do business in Iowa as an insurer. An insurance company must have 50 or more persons employed in Iowa, excluding licensed insurance agents. Effective April 8, 1996, an insurance company means an insurer organized or operating under Iowa Code chapter 508, 514, 515, 518, 518A, 519, or 520 or authorized to do business in this state as an insurer or licensed insurance agent under Iowa Code chapter 522. Excluded from the definition of "insurance company" are fraternal and beneficial societies governed by Iowa Code chapter 512 and health maintenance organizations governed by Iowa Code chapter 514B. This list of exclusions is not intended to be exclusive.

"Manufacturer" means any person, firm, or corporation who purchases, receives, or holds personal property for the purpose of adding to its value by any process of manufacturing, refining, purifying, combining of different materials, or by packing of meats with an intent to sell at a gain or profit. Those who are in the business of printing, newspaper publication, bookbinding, lumber milling, and production of drugs and agricultural supplies are illustrative, nonexclusive examples of manufacturers. Construction contracting; quarrying; remanufacture or rebuilding of tangible personal property (such as automobile engines); provision of health care; farming; transporation for hire; mining; and the activities of restaurateurs, hospitals, and medical doctors are illustrative, nonexclusive examples of businesses which are not manufacturers. See *Associated General Contractors of Iowa v. State Tax Commission,* 255 Iowa 673, 123 N.W.2d 922 (1963) and *River Products Co. v. Board of Review of Washington County,* 332 N.W.2d 116 (Iowa Ct. App. 1982).

"Pollution control equipment" means any disposal system or apparatus used or placed in operation primarily for the purpose of reducing, controlling or eliminating air or water pollution. The term does not include any apparatus used to eliminate "noise pollution." Liquid, solid, and gaseous wastes are included within the meaning of the word "pollution."

"Processing" means an operation or series of operations whereby tangible personal property is subjected to some special treatment by artificial or natural means which changes its form, context, or condition, and results in marketable tangible personal property. See rule 18.29(422,423).

"Processing or storage of data or information." Not only a computer, but machinery or equipment may be used in the processing or storage of data or information. All computers store and process information. However, only if the "final output" for a user or consumer is stored or processed data will the computer be subject to refund or exemption of tax.

"Recycling" means any process by which waste, or materials which would otherwise become waste, are collected, separated, or processed and revised or returned for use in the form of raw materials or products. The term includes, but is not limited to, the composting of yard waste which has been previously separated from other waste. "Recycling" does not include any form of energy recovery.

"Replacement parts." Replacement parts which are depreciable for state and federal income tax purposes include only those replacement parts which either materially add to the value of industrial machinery, equipment, or computers or appreciably prolong their lives. Replacement parts which only keep machinery, equipment, or computers in their ordinarily efficient operating condition are not eligible for exemption. Included within the meaning of replacement parts is any part the cost of which is depreciable for state and federal income tax purposes but which may also be deducted as a current expense. So long as the cost is depreciable the sale or lease of the replacement part is eligible for exemption from tax. However, the person claiming the exemption must show that the replacement part which was deducted as an expense could have been depreciated under state and federal income tax law.

"Research and development" means experimental or laboratory activity which has as its ultimate goal the development of new products, processes of manufacturing, refining, purifying, combining of different materials, or meat packing. The ultimate goal of research and development must be that of adding value to products. The term "research and development" does not include testing or inspection for quality control purposes, efficiency surveys, management studies, consumer surveys, advertising, promotions, or research in connection with literary, historical, or similar projects. Machinery, equipment, and computers are used "directly" in research and development only if they are used in actual experimental or laboratory activity that qualifies as research and development under this subrule.

"Specified property" means property that is a computer or industrial machinery and equipment including pollution control equipment and depreciable replacement parts for that property.

18.45(2) *Requirements.* The sale or rental of specified property is exempt from tax if:

a. The property is real property within the scope of Iowa Code section 427A.1(1)*"e"* or *"j."* For sales occurring after January 1, 1994, the property is not required to be subject to taxation as real property (however, see subrules 18.45(4) and 18.45(8)); and

b. The property is directly and primarily used in one of the following:

1. By a manufacturer in processing tangible personal property; or

2. In research and development of new products or processes of manufacturing, refining, purifying, combining of different materials or packing of meats to be used for the purposes of adding value to products; or

3. In processing or storage of data or information by an insurance company, financial institution, or commercial enterprise.

c. To qualify for refund or exemption, a computer may be taxable as either commercial or industrial real estate. Machinery and equipment must be taxable as industrial real estate only to be similarly qualified. Research and development machinery and equipment that is not taxable as industrial real estate does not qualify for refund or exemption. See 701—subrules 71.1(5) and 71.1(6) for characterizations of "commercial" and "industrial" real estate. However, see subrule 18.45(4) for an exception to the requirement that certain property be taxable as real property.

d. The following are examples of machinery which is not directly used in manufacturing:

1. Machinery used exclusively for the efficient use of other machinery. Examples are: air cooling, air conditioning, and exhaust systems.

2. Machinery used in support operations, such as a machine shop, in which production machinery is assembled, maintained or repaired.

3. Machinery used by administrative, accounting, and personnel departments.

4. Machinery used by plant security, fire prevention, first aid, and hospital stations.

5. Machinery used in plant cleaning, disposal of scrap and waste, plant communications, lighting, safety, or heating.

e. The following is an example of property directly used in research and development: Frontier Hybrid, Inc. maintains a research and development laboratory for use in developing a corn plant which is a perennial. It purchases the following items for use in its research and development laboratory: a computer which will process data relating to the genetic structure of the various corn plants which Frontier Hybrid is testing, an electron microscope for examining the structure of corn plant genes, a "steam cleaner" for cleaning rugs in the laboratory offices, and a typewriter for use by the laboratory director's secretary. The computer and the microscope are "directly" used in the research in which the laboratory is engaged; the steam cleaner and the typewriter only indirectly used. Therefore, purchase of the computer and microscope would be exempt from tax; purchase of the steam cleaner and typewriter would be subject to tax.

f. The following is an example of property used in processing or storage of information or data: A health insurance company has three computers. Computer A is used to monitor the temperature within the insurance company's building. The computer transmits messages to the building's heating and cooling systems telling them when to raise or lower the level of heating or air conditioning as needed. Computer B is used to store patient records and will recall those records on demand. Computer C is used to tabulate statistics regarding the amount of premiums paid in and the amount of benefit paid out for various classes of insured. The "final output" of Computer A is neither stored nor processed information. The final output of Computer B is stored information. The final output of Computer C is processed information. The sale, lease, or use of Computers B and C would qualify for exemption or refund.

g. The following is an example of property not used in manufacturing: A manufacturing plant located in Warren County which manufactures widgets fabricates its own patterns used in manufacturing the widgets on a metal press machine in its machine shop located in Story County. The machine shop does not sell the patterns and the metal press machine is used for no other purpose than to fabricate the patterns. The metal press machine is not used in manufacturing because there is no intent to sell the patterns used by the machine shop at a gain or profit.

18.45(3) *Exceptions.* The following specified property is not exempt:

a. Property assessed by the department of revenue pursuant to Iowa Code chapters 428, 433, 434 and 436 to 438, inclusive. For electric, gas, water, and other companies assessed under Iowa Code chapter 428, only property owned by the company is assessed by the department. For railroad, telephone, pipeline, and electric transmission lines companies, property leased to as well as owned by the company is assessed by the department. See 701—Chapters 71 and 77.

b. Hand tools.

c. Point-of-sale equipment. See 701—subrule 71.1(7).

18.45(4) *Inclusions.* Property exempt from taxation for property tax purposes under the provisions of Iowa Code chapters 404 and 427B relating to urban revitalization property and industrial machinery receiving partial exemption by ordinance is also eligible for exemption from sales and use taxes even though the property is not subject to taxation as real property. Urban revitalization property and industrial machinery receiving partial exemption by ordinance are discussed in rules 701—80.8(404) and 80.6(427B), respectively. This property must meet the other requirements in subrule 18.45(2) in order to be exempt from sales and use taxes.

18.45(5) *Lessor purchases of specified property.* The analysis contained in rule 18.44(422, 423) regarding lessor purchases of farm machinery and equipment is applicable to explain that same problem regarding specified property. See subrule 18.44(3) for analysis.

18.45(6) *Rights of refund and exemption.* Rescinded IAB 10/13/93, effective 11/17/93.

18.45(7) *Designing or installing new industrial machinery or equipment.* On and after July 1, 1985, the gross receipts from the services of designing or installing new industrial machinery or equipment shall be exempt from tax. The enumerated services of electrical or electronic installation are included in this exemption. To qualify for the exemption, the sale or rental of the machinery or equipment must be subject to refund or exemption under this rule. In addition, the machinery or equipment must be "new." For purposes of this subrule, "new" means never having been used or consumed by anyone. The exemption is not applicable to reconstructed, rebuilt or repaired or previously owned machinery or equipment. The exemption is applicable to new machinery and equipment designed or installed for rental as well as for sale. The gross receipts from design or installation must be separately identified, charged separately, and reasonable in amount for the exemption to apply. A "computer" is not considered to be machinery or equipment, and its installation or design is not eligible for this exemption.

18.45(8) *Property used in recycling or reprocessing of waste products.* On and after July 1, 1989, the gross receipts from the sale or rental of machinery, equipment, or computers directly and primarily used in the recycling or reprocessing of waste products shall be exempt from tax. Machinery or equipment used in the recycling or reprocessing of waste products includes, but is not limited to, compactors, balers, crushers, grinders, cutters, or shears directly and primarily used for this purpose. The sale of an endloader, forklift, truck, or other moving device is exempt from tax if the device is directly and primarily used in the movement of property which is an integral part of recycling or reprocessing. See 18.45(8)*"c."* The sale of a bin for storage ordinarily would not be exempt from tax, storage without more not being a part of recycling or reprocessing. Certain limits for exemption placed upon industrial machinery and equipment are not applicable to machinery and equipment used in recycling or reprocessing.

For example, machinery, equipment or a computer need not meet the requirements of 18.45(2)*"a"* concerning specified property being real property for the exemption to apply. Furthermore, the exemption will apply even if the machinery, equipment or computer is purchased by a person other than an insurance company, financial institution or commercial enterprise. For instance, a person engaged in a profession or occupation could purchase property for direct and primary use in recycling or reprocessing of waste products and the exemption would apply.

a. By way of nonexclusive examples, recycling or reprocessing can begin when waste or material which would otherwise become waste is collected or separated. A vehicle used directly and primarily for collecting waste which will be recycled or reprocessed could be a vehicle used for an exempt purpose under this rule. Thus, the purchaser of a garbage truck could claim this exemption if the truck were directly and primarily used in recycling and not, for instance, in hauling garbage to a landfill. Machinery or equipment used to segregate waste from material to be recycled or reprocessed or used to separate various forms of materials which will be reprocessed (e.g., glass and aluminum) can also be used at the beginning of recycling or reprocessing.

b. Machinery and equipment directly and primarily used in recycling or reprocessing. See subrule 18.45(1) for the definition of "directly used" which is applicable to this subrule. The examples of machinery not directly used in manufacturing set out in 18.45(2)*"d"* should be studied for guidance in determining whether similar machinery is or is not used in recycling or reprocessing; e.g., machinery used in plant security (see 18.45(2)*"d"*"4") is not machinery directly used in recycling or reprocessing.

c. Integral use in recycling or reprocessing. Ordinarily, any operation or series of operations which does not transform waste or material which would otherwise become waste into new raw materials or products would not be a part of recycling or reprocessing. However, activities which do not do this, but are an "integral part" of recycling or reprocessing, are themselves recycling or reprocessing. For example, an endless belt which moves aluminum cans from a machine where they are shredded to a machine where the shredded aluminum is crushed into blocks would be an endless belt used in recycling or reprocessing and the exemption applies. See subrule 18.29(5) for a discussion of when an activity is an integral part of "processing." Some of that discussion is applicable to this subrule.

d. The end of recycling or reprocessing. Recycling or reprocessing ends when waste or a material which would otherwise become waste is in the form of raw material in which it will be used in manufacturing or in the form of a product which will be sold for use other than as a raw material in manufacturing. For instance, a corporation purchases a machine which grinds logs, stumps, pallets, and

crates and other waste wood into wood chips. After grinding, the wood chips are sold and transported to purchasers to various sites where the chips are dumped on and spread out over the ground for use in erosion control. The machine which grinds the wood chips is a machine used in recycling. The truck which transports the wood chips from the machine to the sites is not used in reprocessing because, at the time the chips are placed in the truck, they are in the form in which they will be sold for use other than as a raw material in manufacturing.

This rule is intended to implement Iowa Code section 422.45(26), Iowa Code section 422.45(27) as amended by 1996 Iowa Acts, chapter 1049, and Iowa Code section 422.45(29).

701—18.46(422,423) Automotive fluids. The gross receipts from the sales of certain automotive fluids are exempt from tax. To be considered exempt, the sale must possess the following characteristics: (1) the sale must be to a retailer who will install the automotive fluid in or apply the automotive fluid to a motor vehicle; and (2) the installation or application must be done while the retailer is providing a taxable enumerated service (e.g., automobile lubrication); or (3) the automotive fluid must be installed in or applied to a motor vehicle which the retailer intends to sell and the sale of which will be subject to Iowa use tax.

Specific but nonexclusive examples of "automotive fluids" are motor oil and other automobile lubricants, hydraulic, brake, and transmission fluids, sealants, undercoatings, antifreeze, and gasoline additives.

This rule is intended to implement Iowa Code section 422.45(33).

701—18.47(422,423) Maintenance or repair of fabric or clothing.

18.47(1) As of July 1, 1987, sales of chemicals, solvents, sorbents, or reagents consumed in the maintenance or repair of fabric or clothing are exempt from tax. See 701—subrule 17.14(1) for definitions of the terms "chemical, solvent, sorbent or reagent." This subrule's exemption is mainly applicable to dry-cleaning and laundry establishments; however, it is also applicable to soap or any chemical or solvent used to clean carpeting. The department presumes that a substance is "directly used" in the maintenance or repair of fabric or clothing if the substance comes in contact with the fabric or clothing during the maintenance or repair process. Substances which do not come into direct contact with fabric or clothing may, under appropriate circumstances, be directly used in the maintenance or repair of the fabric or clothing but direct use will not be presumed.

The following are examples of substances directly used and consumed in the maintenance or repair of fabric or clothing: perchloroethlyene "perch" or petroleum solvents used in dry-cleaning machines and coming in direct contact with the clothing being dry-cleaned. Substances used to clean or filter the "perch" or petroleum solvents would also be exempt from tax, even though these substances do not come in direct contact with the clothing being cleaned. The sale of soap or detergents especially made for mixing with "perch" or petroleum solvents is exempt. The sale of stain removers to dry cleaners is exempt from tax.

A commercial laundry's purchase of detergents, bleaches, and fabric softeners is exempt from tax. A commercial laundry's purchase of water, which is a solvent, is also exempt from tax if purchased for use in the cleaning of clothing.

The purchase of starch by laundries and "sizing" by dry cleaners is not exempt from tax.

18.47(2) Also, on and after July 1, 1987, the sale of property which is a container, label, or similar article or receptacle for transfer in association with the maintenance or repair of fabric or clothing is exempt from tax. In general, the sale of any article which protects dry-cleaned or laundered clothing from dirt or helps the dry-cleaned or laundered clothing to maintain its proper shape or form in the same fashion as a container does would be exempt from tax under this subrule. By way of nonexclusive example, the sale of plastic garment bags, which protect clothing from dirt, is exempt from tax. The sale of "shirt boards" and garment hangers, both of which help clothing to maintain its proper shape, would also be exempt.

A container, label, or similar article's sale is exempt from tax only if the item is transferred to the customer of a commercial laundry, dry cleaner, or other retailer. Thus, "bundle bags" and "meese carts,"

used to transfer or transport clothing within a dry-cleaning establishment, are not subject to the exemption because these bags and carts remain with the dry cleaner and are not transferred to a customer.

Concerning labels, the sale of which would be exempt from tax, these labels must be affixed to the dry-cleaned or laundered clothing and transferred to the customer of the dry-cleaning or laundering establishment. By way of nonexclusive example, the sale to dry cleaners, of "special attention," "invoice" and "sorry" tags would be exempt from tax.

The sale of safety pins and other types of clips used to hang skirts and other garments from hangers would not be exempt from tax. These items do not sufficiently resemble containers or labels to the extent that their sale is exempt from tax.

This rule is intended to implement Division IV of Iowa Code chapter 422.

701—18.48(422,423) Sale or rental of farm machinery, equipment, replacement parts, and repairs used in livestock, dairy, or plant production. Sales or rental of farm machinery and equipment used in livestock or dairy production and replacement parts which occur on or after July 1, 1988, are exempt from sales and use tax. On and after July 1, 1995, machinery, equipment, and replacement parts used in the production of flowering, ornamental, or vegetable plants are exempt from tax. See rule 701—18.57(422,423).

18.48(1) *Definitions and characterizations.* For the purposes of this rule, the following definitions and characterizations of words apply.

a. "Machinery" means major mechanical machines or major components thereof which contribute directly and primarily to the livestock or dairy production process. Usually, a machine is a large object with moving parts which performs work by the expenditure of energy, either mechanical (e.g., gasoline or kerosene) or electrical.

b. "Equipment" is tangible personal property (other than a machine) directly and primarily used in livestock or dairy production. It may be characterized as property which performs a specialized function which, of itself, has no moving parts or if it does possess moving parts, its source of power is external to it. The following examples attempt to differentiate between machinery and equipment:

EXAMPLE A. An electric pump is used to pump milk into a bulk milk tank. The electric pump is machinery; the bulk milk tank is equipment.

EXAMPLE B. An auger places feed into a cattle feeder. If not "real property" (see 18.48(1)*"c"*) the auger is a piece of machinery; the cattle feeder is a piece of equipment.

c. Property used in livestock or dairy production which is neither "equipment" nor "machinery."

(1) Real property. The ground or the earth is not machinery or equipment. A building is not machinery or equipment, *Mid-American Growers, Inc. v. Dept. of Revenue,* 493 N.E.2d 1097 (Ill. App. Ct. 1986). Therefore, tangible personal property which is sold for incorporation into the ground or a building in such a manner that it will become a part of the ground or the building is taxable. Generally, property incorporated into the ground or a building has become a part of the ground or the building if removal of the property from the ground or building will substantially damage the property, ground, or building or substantially diminish the value of the property, ground, or building. Fence posts embedded in concrete and electrical wiring, light fixtures, fuse boxes, and switches are examples of property sold for incorporation into the ground or a building, respectively. The property referred to in 18.48(1)*"c"*(1) can be identified by applying the following test: Assume that the property is being sold to a contractor rather than a person engaged in livestock or dairy production. If sold to a contractor, would the retailer be required to consider the property "building material" and charge the contractor sales tax upon the purchase of this building material. If this is the case, sale of the property is not exempt from Iowa tax law. Iowa department of revenue rule 701—19.3(422,423) contains a characterization of "building material" and a list of specific examples of building material.

(2) "Supplies" are neither machinery nor equipment. Tangible personal property is part of farm supplies if it is used up or destroyed by virtue of its use in livestock or dairy production or, because of its nature, can only be used once in livestock or dairy production. A light bulb is an example of a farm supply which is not machinery or equipment. The sale of some farm supplies is exempt from tax. See

701—subrule 17.9(3). See List B in subrule 18.48(7) for examples of farm supplies which could be mistaken for equipment and are not exempt from tax on other grounds.

d. "Hand tools" are tools which can be held in the hand or hands and which are powered by human effort. Hand tools specifically designed for use in livestock or dairy production are exempt from tax as "equipment." Mechanical devices that are held in the hand and driven by electricity or some source other than human muscle power are, if otherwise qualified, exempt from tax as "farm machinery." See subrule 18.48(7), List C, for examples of "hand tools" exempt and not exempt from tax.

e. Directly used in livestock or dairy production. To determine if machinery or equipment is "directly" used in livestock or dairy production, one must first ensure that the machinery or equipment is used during livestock or dairy production and not before that process has begun or after it has ended. Subrule 18.48(1), paragraph *"g,"* describes when livestock or dairy production begins and ends. If the machinery or equipment is used in livestock or dairy production, to be "directly" so used, that use must constitute an integral and essential part of production as distinguished from a use in production which is incidental, merely convenient to or remote from production. The fact that machinery or equipment is essential or necessary to livestock or dairy production does not mean that it is also "directly" used in production. Machinery or equipment may be necessary to livestock or dairy production but so remote from it that it is not directly used in that production.

(1) In determining whether machinery or equipment is used directly, consideration should be given to the following factors:

1. The physical proximity of the machinery or equipment to other machinery or equipment whose direct use is unarguable. The closer the machinery or equipment whose direct use is questioned is to the machinery or equipment whose direct use is not questioned, the more likely it is that the former is directly used in livestock or dairy production.

2. The proximity in time of the use of machinery or equipment whose direct use is questionable to the use of machinery whose direct use is not questioned. The closer in time the use, the more likely that the questioned machinery or equipment's use is direct rather than remote.

3. The active causal relationship between the use of the machinery or equipment in question and livestock or dairy production. The fewer intervening causes between the use of the machinery or equipment and the production of the product, the more likely it is that the machinery or equipment is directly used in production.

(2) The following are examples of machinery and equipment directly used in livestock or dairy production:

1. Machinery and equipment used to transport or limit the movement of livestock and dairy animals (e.g., electric fence equipment, head gates, and loading chutes).

2. Machinery and equipment used in the conception, birth, feeding, and watering of livestock or dairy animals (e.g., artificial insemination equipment, portable farrowing pens, feed carts, and automatic watering equipment).

3. Machinery and equipment used to maintain healthful or sanitary conditions in the immediate area where livestock are kept (e.g., manure gutter cleaners, automatic cattle oilers, fans, and heaters if not real property).

4. Machinery or equipment used to test or inspect livestock or dairy animals during production.

(3) The following are nonexclusive examples of machinery or equipment which would not be directly used in livestock or dairy production.

1. Machinery or equipment used to assemble, maintain, or repair other machinery or equipment directly used in livestock or dairy production (e.g., welders, paint sprayers, and lubricators).

2. Machinery used in farm management, administration, advertising, or selling (e.g., a recordkeeping computer, calculating machine, office safe, telephone, books, and farm magazines).

3. Machinery or equipment used in the exhibit of livestock or dairy animals (e.g., blankets, halters, prods, leads, and harnesses).

4. Machinery or equipment used in safety or fire prevention, even though the machinery or equipment is required by law.

5. Machinery or equipment for employee or personal use. Machinery or equipment used for the personal comfort, convenience, or use by a farmer, the farmer's family or employees, or persons associated with the farmer are not exempt from tax. Examples of such machinery and equipment include the following: beds, mattresses, blankets, tableware, stoves, refrigerators, and other equipment used in conjunction with the operation of a farm home or of a migrant labor camp, or other facilities for farm employees.

6. Machinery and equipment used for heating, cooling, ventilation, and illumination of farm buildings generally rather than specifically in the immediate area where livestock are kept.

7. Vehicles subject to registration.

f. "Primarily" used in livestock or dairy production. Machinery or equipment is "primarily used in livestock or dairy production" if of the total time that unit of machinery or equipment is used, more than 50 percent of the time is in livestock or dairy production. If a unit of machinery or equipment is used more than 50 percent of the time for production and the balance of time for other business purposes, the exemption applies. If a unit of equipment is used 50 percent or more of the time for business purposes other than livestock or dairy production, the exemption does not apply. Any unit of machinery or equipment used more than 50 percent of the time directly in livestock or dairy production is subject to the exemption.

g. Beginning and end of livestock or dairy production. Livestock or dairy production begins with the purchase or breeding of livestock or dairy animals. Livestock and dairy production ceases when an animal or the product of an animal's body (e.g., wool or milk) has been transported to the point where it will be sold by the farmer or processed.

h. Farm machinery and equipment means machinery and equipment specifically designed for use in livestock and dairy production or equipment and machinery not specifically designed for this use but which are directly and primarily used in livestock or dairy production except for common or ordinary hand tools. See 18.48(1)*"d"* for a definition of "hand tools."

EXAMPLE. Farmer Jones raises livestock and fans must be used to cool the animals. Farmer Jones buys fans designed for use in a residence which he uses directly and solely to cool the livestock. The exemption applies.

i. "Self-propelled implement" has the same meaning as in 701—subrule 17.9(5), paragraph *"c"* where the term is defined to mean an implement which is capable of movement from one place to another under its own power. The term self-propelled implement includes but is not limited to the following items: skidloaders and tractors; and the following machinery if capable of movement under its own power: combines, corn pickers, fertilizer spreaders, hay conditioners/windrowers, sprayers, and bean buggies.

j. Implements customarily drawn or attached to self-propelled implements. The following is a nonexclusive, representative list of implements which are customarily drawn or attached to self-propelled implements: augers, balers, blowers, combines, conveyers, cultivators, disks, drags, dryers (portable), farm wagons, feeder wagons, fertilizer spreaders, front- and rear-end loaders, harrows, hay loaders, mowers and rakes, husking machines, manure spreaders, planters, plows, posthole diggers, rotary blade mowers, rotary hoes, sprayers and tanks, and tillage equipment.

k. The term "grain dryer" includes the heater and the blower necessary to force the warmed air into a grain storage bin. It does not include equipment used in grain storage or movement such as augers and spreaders or any other equipment that is not a grain dryer. Equipment other than a grain dryer which is used in grain drying may be exempt or subject to refund if the equipment is a self-propelled implement or customarily drawn or attached to a self-propelled implement.

l. The term "replacement parts essential to any repair or reconstruction necessary to farm machinery or equipment's exempt use in the production of agricultural products" does not include attachments and accessories not essential to the operation of the machinery or equipment itself (except when sold as part of the assembled unit) such as cigarette lighters, radios, canopies, air conditioning units, cabs, deluxe seats, and tools or utility boxes.

18.48(2) *Right of refund for farm machinery and equipment used in livestock or dairy production, basic requirements.* Rescinded IAB 10/13/93, effective 11/17/93.

18.48(3) *Treatment of replacement parts.* Rescinded IAB 10/13/93, effective 11/17/93.

18.48(4) *Packing material used in agricultural, livestock, or dairy production.* For sales occurring on or after July 1, 1996, the gross receipts from the sale of property which is a container, label, carton, pallet, packing case, wrapping, baling wire, twine, bag, bottle, shipping case, or other similar article or receptacle sold for use in agricultural, livestock, or dairy production are not subject to sales tax. This exemption also applies to producers of ornamental, flowering, or vegetable plants in commercial greenhouses or other places which sell such items in the ordinary course of business since that activity is considered to be agricultural.

18.48(5) Rescinded IAB 11/20/96, effective 12/25/96.

18.48(6) *Auxiliary attachments exemption.* On and after July 1, 1995, sales of auxiliary attachments which improve the performance, safety, operation, or efficiency of machinery or equipment are exempt from tax. Sales of replacement parts for these auxiliary attachments are also exempt on and after that date.

18.48(7) *Lists.* Lists (representative but not all-inclusive) of tangible personal property for which sales or use tax paid is or is not refundable.

LIST A. Property Used in Livestock and Dairy Production Which is Usually Real Property. See 18.48(1)*"c"*(1). Its sale is usually taxable.

barn ventilators*	livestock feeders*
conveyers*	silos
farrowing crates*	specialized flooring*
fence posts	sprinklers
fencing wire	stanchions
furnaces*	watering tanks*
gestation stalls*	ventilators*

*These items also appear in List D. Tax paid on their sale can be refundable or their sale exempt if the items are not real property.

LIST B. Taxable Farm Supplies Which Are Not Machinery or Equipment

burlap*	lubricants
disposable hypodermic syringes	marking chalk
ear tags	packages for one-time use
hog rings	

*Burlap is exempt when used in the form of a bag, container, wrap or other receptacle or packaging material.

LIST C. Hand Tools—Taxable and Nontaxable

axes	lanterns
brooms	milk cans*
buckets	mops
cleaning brushes	paintbrushes

dehorners (nonelectric)*
garden hoses
grease guns
hammers
hay hooks*
hog ringers*
lamps
pliers
scrapers
screwdrivers
shovels
wheelbarrows
wrenches

*Hand tools specially designed for use in livestock or dairy production are equipment. Tax paid on the sale or use of these hand tools is refundable.

LIST D. Farm Machinery and Equipment Directly and
Primarily Used in Livestock or Dairy Production.
Tax Paid is Usually Refundable or the Sale Exempt.

artificial insemination equipment
augers*
automatic feeding systems*
bulk feeding tanks*
bulk milk coolers
bulk milk tanks
cattle weaners and feeders
cattle currying and oiling machines
cattle feeders*
conveyers*
dehorners, electric
electric fence equipment
fans*
farrowing crates, houses and stalls*
feed bins*
feed carts
feed elevators*
feed grinders
feed tanks*
feeders
foggers
furnaces*
gates*
grain augers
head gates
heating pads and lamps
hog feeders*
hypodermic syringes and needles, nondisposable
livestock feeding, watering and handling equipment*
loading chutes*
LP gas tanks
manure handling equipment*
milk coolers
milk strainers
milking machines
refrigerators used to cool raw milk
silo unloaders
specialized flooring*
space heaters
sprayers
squeeze chutes*
vacuum coolers
ventilators*

If not real property. See 18.48(1)"c"*(1).

18.48(8) *Seller's and purchaser's liability for sales tax.* The seller shall be relieved of sales tax liability if the seller takes from the purchaser an exemption certificate stating that the purchase is of machinery or equipment meeting the requirements of subrule 18.48(4). An exemption certificate can take the form of a stamp imprinted onto one of the documents of sale. If items purchased tax-free

pursuant to an exemption certificate are used or disposed of by the purchaser in a nonexempt manner, the purchaser is solely liable for the taxes and shall remit the tax directly to the department.

This rule is intended to implement Iowa Code section 422.45 as amended by 1996 Iowa Acts, chapter 1145.

701—18.49(422,423) Aircraft sales, rental, component parts, and services exemptions prior to, on, and after July 1, 1999.

18.49(1) Prior to July 1, 1999, sales in Iowa of aircraft subject to registration were subject to sales tax. On and after July 1, 1999, sales of aircraft in Iowa are subject to Iowa use tax rather than Iowa sales tax. See rule 701—31.6(423). Also, on and after that date, the use tax imposed on sales of aircraft in Iowa is collected by the Iowa department of transportation at the time of the aircraft's registration. Sales of certain aircraft parts in Iowa, the performance of taxable services in Iowa on or in connection with the repair, remodeling, or maintenance of aircraft, and the rental of aircraft in Iowa remain subject to Iowa sales tax on and after July 1, 1999. See subrule 18.49(3).

18.49(2) For the purposes of this subrule only, an "aircraft" is any contrivance known or hereafter invented which is designed for navigation of or flight in the air and is used in a scheduled interstate Federal Aviation Administration certified air carrier operation.

a. *Exempt aircraft sales.* As of July 1, 1988, and up to and including June 30, 1999, gross receipts from the sale of aircraft are exempt from tax.

b. *Exempt rental of aircraft.* Effective May 1, 1995, and retroactive to July 1, 1988, the taxable rental (see 701—26.74(422,423)) of aircraft, as defined in the introductory paragraph of this subrule, is exempt from tax.

c. *Exempt sale or rental of aircraft parts.* Effective May 1, 1995, and retroactive to July 1, 1988, gross receipts from the sale or rental of tangible personal property permanently affixed to any aircraft as a component part of that aircraft are exempt from tax. The term "component parts" includes, but is not limited to, repair or replacement parts and materials.

d. *Exempt performance of services.* Effective May 1, 1995, and retroactive to July 1, 1988, gross receipts from the rendering, furnishing, or performing of services in connection with the repair, remodeling, or maintenance of aircraft (including aircraft engines and component materials or parts) are exempt from tax.

18.49(3) For the purposes of this subrule only, an "aircraft" is any aircraft used in a nonscheduled interstate Federal Aviation Administration certified air carrier operation conducted under 14 CFR ch. 1, pt. 135. On and after July 1, 1998, the gross receipts from the sale or rental of tangible personal property permanently affixed or permanently attached as a component part of these aircraft, including but not limited to repair or replacement materials or parts, are exempt from tax. Also exempt, on and after that date, are the gross receipts from the performance of any service used for aircraft repair, remodeling, or maintenance when the service is performed on an aircraft, aircraft engine, or aircraft component material or part exempt under this subrule. Gross receipts from the sale or rental of aircraft are not exempt from tax under this subrule.

18.49(4) For the purposes of this subrule only, an "aircraft" is any contrivance known or hereafter invented which is designed for navigation of or flight in the air. On and after July 1, 1998, and up to and including June 30, 1999, the gross receipts from the sale of an aircraft to an aircraft dealer who rents or leases the aircraft to another are exempt from tax if all of the following circumstances exist:

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

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

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

As soon as an aircraft, the sale of which is exempt under this subrule, is used for any purpose other than leasing or renting, or the conditions set out in paragraphs *"a," "b,"* and *"c"* are not continuously met, the dealer claiming the exemption is liable for the tax which would have been due but for the exemption set out in this subrule. Tax will be computed on the original purchase price paid by the dealer.

See rule 701—32.13(423) for a description of the manner in which transactions described in this subrule are exempted from tax on and after July 1, 1999.

This rule is intended to implement Iowa Code section 422.45, subsections 38, 38A, 38B and 38C and Iowa Code section 423.2 as amended by 1999 Iowa Acts, chapter 168.

701—18.50(422,423) Property used by a lending organization. On and after July 1, 1988, the gross receipts from the sale of tangible personal property to a nonprofit organization organized for the purpose of lending the tangible personal property to the general public for use by the public for nonprofit purposes are exempt from tax. The exemption contained in this rule is applicable to tangible personal property only, and not to taxable services. It is applicable to the sale of that property and not to its rental to a nonprofit organization. Finally, the exemption is applicable only to property purchased by a nonprofit organization for subsequent rental to the general public. The exemption is not applicable to other property (e.g., office equipment) which the nonprofit organization might need for its ongoing existence.

This rule is intended to implement Iowa Code section 422.45(36).

701—18.51(422,423) Sales to nonprofit legal aid organizations. On and after July 1, 1988, the gross receipts from the sale or rental of tangible personal property or from services performed, rendered, or furnished to a nonprofit legal aid organization are exempt from tax.

This rule is intended to implement Iowa Code subsection 422.45(37).

701—18.52(422,423) Irrigation equipment used in farming operations. On and after July 1, 1989, the gross receipts from the sale or rental of irrigation equipment used in farming operations are exempt from tax. The term "irrigation equipment" includes, but is not limited to, circle irrigation systems and trickle irrigation systems. The term "farming operations" has the same meaning as the term "agricultural production" set out in 701—subrule 17.9(3), paragraph *"a,"* and as further characterized in 18.44(2)*"a."*

Effective May 18, 2001, and retroactive to April 1, 1995, the gross receipts from the sale or rental of irrigation equipment, as defined above, whether installed above or below ground are exempt from tax as long as the equipment is sold or rented by a contractor or farmer and the equipment is primarily used in agricultural operations.

Contractors or farmers entitled to the exemption set forth in the previous paragraph may apply for a refund of taxes, interest or penalties paid on the sale or rental of qualifying irrigation equipment for transactions that occurred between April 1, 1995, and May 18, 2001. To be eligible for refund, refund claims must be filed with the department prior to October 1, 2001. Refund claims are limited to $25,000 in the aggregate and will not be allowed if not timely filed. If the amount of refund claims totals more than $25,000 in the aggregate, the department will prorate the $25,000 among all claimants in relation to the amounts of the claimants' valid claims.

This rule is intended to implement Iowa Code section 422.45 and 2001 Iowa Acts, House File 723.

701—18.53(422,423) Sales to persons engaged in the consumer rental purchase business. On and after July 1, 1989, the gross receipts from the sale of tangible personal property, except vehicles subject to registration, to persons regularly engaged in the consumer purchase business are exempt from tax if the property (1) is sold for the purpose of utilization in a transaction involving a "consumer rental purchase agreement" as defined in Iowa Code subsection 537.3604(8), and (2) the gross receipts from the consumer rental of the property are subject to Iowa sales or use tax.

If property exempt under this rule is made use of for any purpose other than a consumer rental purchase, the person claiming the exemption is liable for the tax that would have been due had the exemption not existed. The tax shall be computed on the original purchase price to the person claiming the exemption. The aggregate of the tax paid on the consumer rental purchase of the property, not exceeding the amount of sales or use tax owed, shall be credited against the tax.

This rule is intended to implement Iowa Code section 422.45(18).

701—18.54(422,423) Sales of advertising material. On and after July 1, 1990, gross receipts from the sales of advertising material to any person in Iowa are exempt from tax if that person, or any agent of

that person, will, after the sale, send that advertising material outside of Iowa and subsequent sole use of that material will be outside this state.

For the purposes of this rule "advertising material" is tangible personal property only, including paper. "Advertising material" is limited to the following: brochures, catalogs, leaflets, fliers, order forms, return envelopes, floppy discs, CD-ROMs, videotapes, and any similar items of tangible personal property which will be used to promote sales of property or services.

This rule is intended to implement Iowa Code section 422.45.

701—18.55(422,423) Drop shipment sales. A "drop shipment" generally involves two sales transactions and three parties. The first party is a consumer located inside Iowa. The second party is a retailer located outside the state. The third party is a supplier who may be located inside or outside of Iowa. The two sales transactions in question are the sale of property from the supplier to the out-of-state retailer, and the further sale of that property from the out-of-state retailer to the consumer in Iowa.

A "drop shipment sale" occurs when the consumer places an order for the purchase of tangible personal property with the out-of-state retailer. The retailer does not own the property ordered at the same time the consumer's order is placed. The retailer then purchases the property from the supplier. The supplier in turn ships the property directly to the consumer in Iowa. Under Iowa law the supplier in a drop shipment sale cannot be required to collect tax (either sales or use) from the consumer, even if the requisite "nexus" to require collection exists. See the next to last paragraph of this rule for a characterization of "nexus." The supplier transfers possession of the goods to the consumer; however, transfer of possession alone has never been held to be a "sale" for the purposes of Iowa sales and use tax law. *Sturtz v. Iowa Department of Revenue,* 373 N.W.2d 131 (Iowa 1985) and *Cedar Valley Leasing v. Iowa Department of Revenue,* 274 N.W.2d 357 (Iowa 1979).

With reference to drop shipment sales: If delivery of the goods under the contract for sale has occurred outside of Iowa, sale of the goods has occurred outside of Iowa. If delivery of the goods under the contract for sale has occurred within Iowa, the sale has occurred here. See *Sturtz* above for more information regarding sales and delivery. If the sale has occurred in Iowa and the retailer possesses the requisite nexus to require it to collect Iowa tax, the retailer is obligated to collect Iowa sales tax upon the "gross receipts" from its sale of the goods to the consumer. If the sale has occurred outside this state, and the retailer possesses the nexus to require it to collect Iowa tax, the retailer is obligated to collect Iowa retailer's use tax upon the purchase price of the goods. If the retailer does not have nexus sufficient to require it to collect either Iowa sales or Iowa use tax, or if the retailer fails to collect either tax, the consumer is obligated to pay a consumer use tax directly to the department upon the purchase price of the goods. These rules are illustrated in the following examples.

EXAMPLE A: A consumer in Des Moines, Iowa, purchases goods from a retailer in Minneapolis, Minnesota. The Minneapolis retailer contracts with a supplier in Iowa to manufacture and ship the goods to the consumer. The retailer has nexus with Iowa, and delivery under the contract for sale has occurred in this state. In this case, the consumer is obligated to pay and the retailer is obligated to collect Iowa sales tax. The supplier is not obligated to collect any Iowa tax.

EXAMPLE B: A consumer in Des Moines, Iowa, purchases goods from a retailer in Minneapolis, Minnesota. The Minnesota retailer contracts with a supplier in Iowa to manufacture and ship the goods to the consumer. The retailer has no nexus with Iowa. Delivery under the contract of sale is in Iowa. Under these circumstances, the consumer is obligated to pay consumer's use tax directly to the department. Neither the retailer nor the supplier is obligated to collect any Iowa tax.

EXAMPLE C: A consumer in Des Moines, Iowa, purchases goods from a retailer in Minneapolis, Minnesota. The retailer contracts with a supplier in Minneapolis to manufacture and ship the goods to the consumer in Des Moines. The retailer has nexus with Iowa, and delivery under the contract for sale occurs in Iowa. Under these circumstances, the consumer is obligated to pay and the retailer is obligated to collect Iowa sales tax. The supplier is not obligated to collect any Iowa tax.

EXAMPLE D: A consumer in Des Moines, Iowa, purchases goods from a retailer in Minneapolis, Minnesota. The retailer contracts with a supplier in Minneapolis to manufacture and ship the goods to the consumer in Des Moines. The retailer has nexus with this state; delivery under the contract for sale

is in Minnesota. Under the circumstances, the consumer is obligated to pay and the retailer is obligated to collect Iowa retailer's use tax. The supplier is not obligated to collect or pay any Iowa tax.

EXAMPLE E: A consumer in Des Moines, Iowa, purchases goods from a retailer in Minneapolis, Minnesota. The retailer contracts with a supplier in Minneapolis to manufacture and ship the goods to the consumer in Des Moines. The retailer has no nexus with this state. Delivery can occur in either Minnesota or Iowa. In this example, the consumer is obligated to pay Iowa consumer's use tax directly to the department. Neither the retailer nor the supplier is obligated to collect any Iowa tax.

EXAMPLE F: A consumer in Des Moines, Iowa, purchases goods from a retailer in Minneapolis, Minnesota. The retailer contracts with a supplier located in Madison, Wisconsin, to ship the goods to the consumer in Des Moines. The retailer has nexus with Iowa, and delivery under the contract for sale is in Iowa. Under these circumstances, the retailer is obligated to collect and the consumer obligated to pay Iowa sales tax. The supplier is not obligated to collect any Iowa tax.

EXAMPLE G: A consumer in Des Moines, Iowa, purchases goods from a retailer in Minneapolis, Minnesota. The retailer contracts with a supplier located in Madison, Wisconsin, to ship the goods to the consumer in Des Moines. The retailer has nexus with Iowa with delivery in Madison, Wisconsin. Under these circumstances, the retailer is obligated to collect and the consumer obligated to pay Iowa retailer's use tax. The supplier is not obligated to collect any Iowa tax.

EXAMPLE H: A consumer in Des Moines, Iowa, purchases goods from a retailer in Minneapolis, Minnesota. The retailer contracts with a supplier located in Madison, Wisconsin, to ship the goods to the consumer in Des Moines. The retailer has no nexus with Iowa. Delivery under the contract for sale may be in Iowa or Wisconsin. Under these circumstances, the consumer is obligated to pay Iowa consumer's use tax directly to the department. Neither the retailer nor the supplier is obligated to collect any Iowa tax.

As used in these examples, the requirement of "nexus" is discussed in *Good's Furniture House Inc. v. Iowa State Bd. of Tax Review,* 382 N.W.2d 145 (Iowa 1986); cert. den. 479 U.S. 817; *State Tax Commission v. General Trading Co.,* 10 N.W.2d 659, 233 Iowa 877 (1943) affd. 64 S.Ct. 1028, 322 U.S. 335, 88 L.Ed. 1309; and *Nelson v. Sears, Roebuck & Co.,* 292 N.W. 130, 228 Iowa 1273 (1940) reversed 61 S.Ct. 586, 312 U.S. 359, 85 L.Ed. 522, as well as other judicial decisions, and Iowa Code section 422.43(12).

This rule is intended to implement Iowa Code subsections 422.42(2) and 422.42(5).

701—18.56(422,423) Wind energy conversion property. On and after July 1, 1993, the gross receipts from the sale of property used to convert wind energy to electrical energy or the gross receipts from the sale of materials used to manufacture, install, or construct property used to convert wind energy to electrical energy shall be exempt from tax.

For the purposes of this rule, "property used to convert wind energy to electrical energy" means any device which converts wind energy to usable electrical energy including, but not limited to, wind chargers, windmills, wind turbines, pad mount transformers, substations, power lines, and tower equipment.

This rule is intended to implement Iowa Code section 422.45 as amended by 1993 Iowa Acts, chapter 161.

701—18.57(422,423) Exemptions applicable to the production of flowering, ornamental, and vegetable plants. On and after July 1, 1995, the production of flowering, ornamental, or vegetable plants by a grower in a commercial greenhouse or at another location is considered to be a part of agricultural production. The word "plants" does not include trees, shrubs, other woody perennials, or fungus. The exemption also applies to implements, machinery, equipment, and replacement parts directly and primarily used in the production of flowering, ornamental, or vegetable plants and fuel used for providing heating or cooling for greenhouses or buildings or parts of buildings dedicated to the production of flowering, ornamental, or vegetable plants intended for sale in the ordinary course of business. The following exemptions are applicable to the production of flowering, ornamental, or vegetable plants.

18.57(1) Sales of fertilizer, limestone, herbicides, pesticides, insecticides, plant food, and medication for use in disease, weed, insect control, or other health promotion of flowering, ornamental, or vegetable plants to a commercial greenhouse are exempt from tax. For the purposes of this subrule a virus, bacteria, fungus, or insect which is purchased for use in killing insects or other pests is an "insecticide" or "pesticide." See rules 701—17.4(422,423) and 17.9(422,423) for more information regarding these exemptions.

18.57(2) Sales of fuel to provide heating or cooling for a greenhouse or building or a part of a building dedicated to the production of flowering, ornamental, or vegetable plants held for sale in the ordinary course of business are exempt from tax. Electricity is a "fuel" for the purposes of this subrule. Fuel used in a plant production building for purposes other than heating or cooling (e.g., lighting) or for purposes other than direct use in plant production (e.g., heating or cooling office space) is not eligible for this exemption. For example, assume that there is a separate meter for electricity used only for heating or cooling. If a greenhouse is used, partially for growing plants and partially for a nonexempt purpose, a proportional exemption from sales tax may be claimed based upon a percentage calculated from a fraction, the numerator of which is the number of square feet of the greenhouse heated or cooled and used for raising plants, and the denominator of which is the number of square feet heated or cooled in the entire greenhouse. It may be necessary to alter this formula (by the use of separate metering, for example) if a greenhouse has a walk-in cooler and the cooler is used directly in plant production. Plant production has ended when a plant has grown to the point that it is of the size or weight at which it will be prepared for shipment to the destination where it will be marketed. Examples of nonexempt purposes for which a portion of a greenhouse might be used include, but are not limited to, portions used for office space, loading docks, storage of property other than plants, housing of heating and cooling equipment and portions used for packaging plants for shipment. See rule 701—15.3(422,423) regarding fuel exemption certificates and subrule 18.48(8) regarding seller's and purchaser's liability for sales tax.

18.57(3) Sales of gas, electricity, steam or other tangible personal property for use as a fuel in implements of husbandry used in the production of plants in a commercial greenhouse or elsewhere are exempt from tax. See 701—subrule 17.9(6), paragraph *"a,"* for a definition of "implements of husbandry."

18.57(4) Sales of self-propelled implements. Sales of self-propelled implements or implements customarily drawn by or attached to self-propelled implements and replacement parts for the same are exempt from tax if the implements are used directly and primarily in the production of plants in commercial greenhouses or elsewhere. See rule 701—18.44(422,423) for an extensive explanation of this exemption. Implements exempt under this subrule include, but are not limited to, forklifts used to transport pallets of plants; wagons containing sterilized soil and tractors used to pull the same.

18.57(5) Sale of water used in the production of plants is exempt from tax. If water is not separately metered, the grower of plants must determine by use of a percentage that portion which is used for a taxable purpose and that portion which is used for an exempt purpose.

Nonexclusive examples of taxable usage would be rest rooms, sanitation, lawns, and vehicle wash.

18.57(6) For sales occurring on or after July 1, 1996, the gross receipts for the sale of property which is a container, label, carton, pallet, packing case, wrapping, baling wire, twine, bag, bottle, shipping case, or other similar article or receptacle sold for use in agricultural, livestock, or dairy production are not subject to sales tax. This exemption also applies to producers of ornamental, flowering, or vegetable plants in commercial greenhouses or other places which sell such items in the ordinary course of business since that activity is considered to be agricultural. A noninclusive list of containers and packaging materials would include boxes, trays, labels, sleeves, tape, and staples.

18.57(7) Sales of machinery and equipment used in plant production which are not self-propelled or attached to self-propelled machinery and equipment are also exempt from tax. See rule 701—18.48(422,423) for a thorough explanation of this exemption. Listed below are a number of examples of machinery and equipment which are directly and primarily used in plant production. Sales of this machinery and equipment to commercial growers are usually exempt from tax.

Air-conditioning pads*

Airflow control tubes

Atmospheric CO_2 control and monitoring equipment
Backup generators
Bins holding sterilized soil
Control panels = heating and cooling
Coolers used to chill plants*
Cooling walls* or membranes
Equipment used to control water levels for subirrigation
Fans = cooling and ventilating*
Floor mesh for controlling weeds
Germination chambers
Greenhouse boilers*
Greenhouse netting or mesh = used for light and heat control
Greenhouse monorail systems*
Greenhouse thermometers
Handcarts used to move plants
Lighting which provides artificial sunlight
Overhead heating, lighting and watering systems
Overhead tracks for holding potted plants*
Plant tables*
Plant watering systems*
Portable buildings used to grow plants*
Seeding and transplanting machines
Soil pot and soil flat filling machines
Steam generators for soil sterilization*
Warning devices = excess heat or cold
Watering booms

If not real property. See 18.48(1)"c"*(1).

18.57(8) Miscellaneous exempt and taxable sales. Sales of pots, soil, seeds, bulbs, and "starter plants" for use in plant production are not the sale of machinery or equipment, but can be sales for resale and exempt from tax if the pots and soil are sold with the final product or become the finished product. Sales of portable buildings which will be used to display plants for retail sales are taxable. Finally, sales of whitewash which will be painted on greenhouses to control the amount of sunlight entering those houses are taxable sales of a "supply" rather than exempt sales of equipment. See 18.48(1)*"c"*(2) relating to "supplies." See rule 701—18.7(422,423) relating to containers, including packaging cases, shipping cases, wrapping materials, and similar items sold to retailers, and see subrule 18.57(6).

This rule is intended to implement Iowa Code sections 422.42(1), 422.42(4), 422.42(11), 422.45(39) and 422.47(4) and Iowa Code section 422.45 as amended by 1996 Iowa Acts, chapter 1145.

701—18.58(422,423) Exempt sales or rentals of computers, industrial machinery and equipment, and exempt sales of fuel and electricity on and after July 1, 1997. The sale or rental of machinery, equipment, or computers used by a manufacturer in processing; the sale or rental of a computer used in the processing or storage of data or information by an insurance company, financial institution, or commercial enterprise; and the sale or rental of various other types of tangible personal property are, under certain circumstances, exempt from tax as of July 1, 1997.

18.58(1) *Definitions.* The following terms are defined for the purposes of this rule in the manner set out below.

"Commercial enterprise" includes businesses and manufacturers conducted for profit and includes centers for data processing services to insurance companies, financial institutions, businesses, and manufacturers, but excludes professions and occupations and nonprofit organizations. A hospital that is a not-for-profit organization would not be a "commercial enterprise." The term "professions" means a vocation or employment requiring specialized knowledge and often long and intensive academic

preparation. The term "occupations" means the principal business of an individual. Included within the meaning of "occupations" is the business of farming. A professional corporation which carries on any business which is a "profession" or "occupation" is not a commercial enterprise.

"Computer" means stored program processing equipment and all devices fastened to it by means of signal cables or any communication medium that serves the function of a signal cable. Nonexclusive examples of devices fastened by a signal cable or other communication medium are terminals, printers, display units, card readers, tape readers, document sorters, optical readers, and card or tape punchers. Excluded from the definition of "computer" is point-of-sale equipment. For a characterization of "point-of-sale equipment," see 701—subrule 71.1(7). Also included within the meaning of the word "computer" is any software consisting of an operating system or executive program. Such software coordinates, supervises, or monitors the basic operating procedures of a computer. An operating system or executive program is exempt from sales tax only if purchased as part of the sale of the computer for which it operates. An operating system or executive program priced separately or sold at a later time is subject to the provisions of rule 18.34(422,423). Excluded from the meaning of the word "computer" is any software consisting of an application program. For purposes of this subrule, "operating system or executive program" means a computer program which is fundamental and necessary to the functioning of a computer. The operating system or executive program software controls the operation of a computer by managing the allocation of all system resources, including the central processing unit, main and secondary storage, input/output devices, and the processing of programs. This is in contrast to application software which is a collection of one or more programs used to develop and implement the specific applications which the computer is to perform, and which calls upon the services of the operating system or executive program.

"Contract manufacturer" is any manufacturer who falls within the definition of "manufacturer" set out subsequently in this subrule except that a contract manufacturer does not sell the tangible personal property which it processes on behalf of other manufacturers.

"Directly used." Property is "directly used" only if it is used to initiate, sustain, or terminate an exempt activity. In determining whether any property is "directly used," consideration should be given to the following factors:

1. The physical proximity of the property in question to the activity in which it is used;
2. The proximity of the time of use of the property in question to the time of use of other property used before and after it in the activity involved; and
3. The active causal relationship between the use of the property in question and the activity involved. The fact that a particular piece of property may be essential to the conduct of the activity because its use is required either by law or practical necessity does not, of itself, mean that the property is directly used.

"Financial institution" is a bank incorporated under any state or federal law; a savings and loan association incorporated under any state or federal law; a credit union organized under any state or federal law; or any corporation licensed as an industrial loan company under Iowa Code chapter 536A. Excluded from the meaning of the term are loan brokers governed by Iowa Code chapter 535C and production credit associations.

"Insurance company" means an insurer organized or operating under Iowa Code chapter 508, 514, 515, 518, 518A, 519, or 520 or authorized to do business in Iowa as an insurer or as a licensed insurance agent under Iowa Code chapter 522. Excluded from the definition of "insurance company" are fraternal and beneficial societies governed by Iowa Code chapter 512 and health maintenance organizations governed by Iowa Code chapter 514B. This list of exclusions is not intended to be exclusive.

"Machinery and equipment" means machinery and equipment used by a manufacturer. Machinery is any mechanical, electrical, or electronic device designed and used to perform some function and to produce a certain effect or result. The term includes not only the basic unit of the machinery, but also any adjunct or attachment necessary for the basic unit to accomplish its intended function. The term also includes all devices used or required to control, regulate, or operate a piece of machinery, provided such devices are directly connected with or are an integral part of the machinery and are used primarily for control, regulation, or operation of machinery. Jigs, dies, tools, and other devices necessary to

the operation of or used in conjunction with the operation of what would be ordinarily thought of as machinery are also considered to be "machinery." See *Deere Manufacturing Co. v. Zeiner,* 247 Iowa 1264, 78 N.W.2d 527 (1956). Also see the definition of "replacement parts" infra. Machinery does not include buildings designed specifically to house or support machinery. Equipment is any tangible personal property used in an operation or activity. Nonexclusive examples of equipment are tables on which property is assembled on an assembly line and chairs used by assembly line workers.

"Manufacturer" means any person, firm, or corporation that purchases, receives, or holds personal property for the purpose of adding to its value by any process of manufacturing, refining, purifying, combining of different materials, or by packing of meats with an intent to sell at a gain or profit. Those who are in the business of printing, newspaper publication, bookbinding, lumber milling, and production of drugs and agricultural supplies are illustrative, nonexclusive examples of manufacturers. Construction contracting; remanufacture or rebuilding of tangible personal property (such as automobile engines); provision of health care; farming; transportation for hire; and the activities of restaurateurs, hospitals, medical doctors, and those who merely process data are illustrative, nonexclusive examples of businesses which are not manufacturers. See *Associated General Contractors of Iowa v. State Tax Commission,* 255 Iowa 673, 123 N.W.2d 922 (1963) and *River Products Co. v. Board of Review of Washington County,* 332 N.W.2d 116 (Iowa Ct. App. 1982). The term "manufacturer" includes a contract manufacturer. Ordinarily, the word does not include those commercial enterprises engaged in quarrying or mining. However, effective July 1, 1998, a commercial enterprise, the principal business of which is quarrying or mining, is a manufacturer with respect to activities in which it engages subsequent to quarrying or mining. These subsequent activities include, by way of nonexclusive example, crushing, washing, sizing, and blending of aggregate materials.

EXAMPLE: Company A owns and operates a gravel pit. It sells the gravel extracted from the pit to others who use the gravel for surfacing roads and as an ingredient in concrete manufacture. Company A removes overlay and raw gravel from the pit. It then transports the gravel to a plant where washing and sizing of the gravel take place. Company A is a manufacturer, but only with respect to those activities which occur after it severs the gravel from the ground.

"Pollution control equipment" means any disposal system or apparatus used or placed in operation primarily for the purpose of reducing, controlling, or eliminating air or water pollution. The term does not include any apparatus used to eliminate "noise pollution." Liquid, solid, and gaseous wastes are included within the meaning of the word "pollution." "Pollution control equipment" specifically includes, but is not limited to, any equipment the use of which is required or certified by an agency of this state or the United States Government. Wastewater treatment facilities and scrubbers used in smokestacks are examples of pollution control equipment. However, pollution control equipment does not include any equipment used only for worker safety (e.g., a gas mask).

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

"Processing or storage of data or information." All computers store and process information. However, only if the "final output" for a user or consumer is stored or processed data will the computer be eligible for exemption of tax.

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

"Recycling" means any process by which waste or materials which would otherwise become waste are collected, separated, or processed and revised or returned for use in the form of raw materials or products. The term includes, but is not limited to, the composting of yard waste which has been previously separated from other waste. "Recycling" does not include any form of energy recovery.

"Replacement parts." A "replacement part" is any machinery, equipment, or computer part which is substituted for another part that has broken, has become worn out or obsolete, or is otherwise unable to perform its intended function. "Replacement parts" are those parts which materially add to the value of industrial machinery, equipment, or computers or appreciably prolong their lives or keep them in their ordinarily efficient operating condition. Excluded from the meaning of the term "replacement parts" are supplies, the use of which is necessary if machinery is to accomplish its intended function. Drill bits, grinding wheels, punches, taps, reamers, saw blades, lubricants, coolants, sanding discs, sanding belts, and air filters are nonexclusive examples of supplies. Sales of supplies remain taxable.

Tangible personal property with an expected useful life of 12 months or more which is used in the operation of machinery, equipment, or computers is rebuttably presumed to be a "replacement part." Tangible personal property used in the same manner with an expected useful life of less than 12 months is rebuttably presumed to be a "supply."

"Research and development" means experimental or laboratory activity which has as its ultimate goal the development of new products or processes of processing. Machinery, equipment, and computers are used "directly" in research and development only if they are used in actual experimental or laboratory activity that qualifies as research and development under this subrule.

18.58(2) *Exempt sales.* On and after July 1, 1997, sales or rentals of the following machinery, equipment, or computers (including replacement parts) are exempt from tax:

a. Machinery, equipment, and computers directly and primarily used in processing by a manufacturer.

b. Machinery, equipment, and computers directly and primarily used to maintain a manufactured product's integrity or to maintain any unique environmental conditions required for the product.

c. Machinery, equipment and computers directly and primarily used to maintain unique environmental conditions required for other machinery, equipment, or computers used in processing by a manufacturer.

d. Test equipment directly and primarily used by a manufacturer in processing to control the quality and specifications of a product.

e. Machinery, equipment, or computers directly and primarily used in research and development of new products or processes of processing.

f. Computers used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise.

g. Machinery, equipment, and computers directly and primarily used in recycling or reprocessing of waste products.

h. Pollution control equipment used by a manufacturer. It is not necessary that the equipment be "directly and primarily" used in any kind of processing.

i. Materials used to construct or self-construct any machinery, equipment, or computer, the sale of which is exempted by paragraphs *"a"* through *"h"* above.

j. Exempt sales of fuel and electricity. Sales of fuel or electricity consumed by machinery, equipment, or computers used in any exempt manner described in paragraphs *"a," "b," "c," "d," "e," "g,"* and *"h"* of this subrule are exempt from tax. Sales of electricity consumed by computers used in the manner described in paragraph *"f"* remain subject to tax.

18.58(3) *Examples of exempt items.* Sales of the following nonexclusive types of machinery and equipment, previously taxable, are exempt on and after July 1, 1997, if that machinery or equipment is sold for direct and primary use in processing by a manufacturer: coolers which do not change the nature of materials stored in them; equipment which eliminates bacteria; palletizers; storage bins; property used to transport raw, semifinished, or finished goods; vehicle-mounted cement mixers; self-constructed machinery and equipment; packaging and bagging equipment (including conveyer systems); equipment which maintains an environment necessary to preserve a product's integrity; equipment which maintains

a product's integrity directly; quality control equipment and electricity or other fuel used to power the machinery and equipment mentioned above.

18.58(4) *Processing—beginning to end.*

a. *The beginning of processing.* Processing begins with a manufacturer's receipt or production of raw material. Thus, when a manufacturer produces its own raw material it is engaged in processing. Processing also begins when raw materials are transferred to a manufacturer's possession by a manufacturer's supplier.

b. *The completion of processing.* Processing ends when the finished product is transferred from the manufacturer or delivered for shipment by the manufacturer. Therefore, a manufacturer's packaging, storage, and transport of a finished product after the product is in the form in which it will be sold at retail are part of the processing of the product.

c. *Examples of the beginning, intervening steps, and the ending of processing.* Of the following, Examples A and B illustrate when processing begins under various circumstances; Example C demonstrates the middle stages of processing; and Example D demonstrates when the end of processing takes place.

EXAMPLE A. Company A manufactures fine furniture. Company A owns a grove of walnut trees which it uses as raw material. A's employees cut the trees, transport the logs to A's factory, offload them there, and store the logs in a warehouse (to begin the curing of their wood) before taking them to A's sawmill. The walnut trees are real property, *Kennedy v. Board of Assessment and Review,* 276 N.W. 205, 224 Iowa 405 (1937). Thus, no "production of raw materials" has occurred with regard to the trees until they have been severed from the soil and transformed into logs. In this example, "processing" of the logs begins when they are placed on vehicles for transport to A's factory. However, note that even though the transport vehicles are used in processing, if they are "vehicles subject to registration," their use is not exempt from tax. See 18.58(6)*"d"* infra.

EXAMPLE B. Company A from the previous example also buys mahogany logs from a supplier in Honduras. Company A uses its own equipment to offload the logs from railroad cars at its manufacturing facility and then transports, stores, and saws the logs as previously described in Example A. Processing begins when Company A offloads the logs from the railroad cars.

EXAMPLE C. Company C is a microbrewery. It uses a variety of kettles, vats, tanks, tubs, and other containers to mix, cook, ferment, settle, age, and store the beer which it brews. It also uses a variety of pipes and pumps to move the beer among the various containers involved in the activity of brewing. All stages of this brewing are part of processing whether those stages involve the transformation of the raw materials from one state to another, e.g., fermentation or aging, or simply involve holding the materials in an existing state, e.g., storage of hops in a bin or storage of the beer immediately prior to bottling. Also, any movement of the beer between containers is an activity which is a part of processing, whether this movement is an "integral part" of the production of the beer or not.

EXAMPLE D. After the brewing process is complete, Company C places its beer in various containers, stores it, and moves the beer to its customers by a common carrier that picks up the beer at C's brewery. C's activities of placing the beer into bottles, cans, and kegs, storing it after packaging, and moving the beer by use of a forklift to the common carrier's pickup site are activities which are part of processing.

18.58(5) *Various unrelated inclusions in and exclusions from this exemption.*

a. The following are nonexclusive examples of machinery which is not directly used in processing:

(1) Machinery used exclusively for the comfort of workers. Examples are air cooling, air conditioning, and ventilation systems.

(2) Machinery used in support operations, such as a machine shop, in which production machinery is assembled, maintained, or repaired.

(3) Machinery used by administrative, accounting, and personnel departments.

(4) Machinery used by plant security, fire prevention, first aid, and hospital stations.

(5) Machinery used in plant communications and safety.

b. The following is an example of property directly used in research and development. Frontier Hybrid, Inc. maintains a research and development laboratory for use in developing a corn plant which is a perennial. It purchases the following items for use in its research and development laboratory:

a computer which will process data relating to the genetic structure of the various corn plants which Frontier Hybrid is testing, an electron microscope for examining the structure of corn plant genes, a "steam cleaner" for cleaning rugs in the laboratory offices, and a typewriter for use by the laboratory director's secretary. The computer and the microscope are "directly" used in the research in which the laboratory is engaged; the steam cleaner and the typewriter only indirectly used. Therefore, purchase of the computer and microscope would be exempt from tax; purchase of the steam cleaner and typewriter would be subject to tax.

c. The following is an example of computers used and not used in processing or storage of information or data. A health insurance company has four computers. Computer A is used to monitor the temperature within the insurance company's building. The computer transmits messages to the building's heating and cooling systems telling them when to raise or lower the level of heating or air conditioning as needed. Computer B is used to store patient records and will recall those records on demand. Computer C is used to tabulate statistics regarding the amount of premiums paid in and the amount of benefits paid out for various classes of insured. Computer D is used to train the insurance company's employees to perform various additional tasks or to better perform work they can already do. Computer D uses various canned programs to accomplish this. The "final output" of Computer A is neither stored nor processed information. Therefore, Computer A does not fit the definition of an exempt computer. The final output of Computer B is stored information. The final output of Computer C is processed information. The final output of Computer D is processed information consisting of the training exercises appearing on the computer monitor. The sale, lease, or use of Computers B, C, and D would qualify for exemption.

d. The following is an example of property not used in processing. A manufacturing plant located in Warren County which manufactures widgets fabricates its own patterns used in manufacturing the widgets on a metal press machine in its machine shop located in Story County. The machine shop does not sell the patterns, and the metal press machine is used for no other purpose than to fabricate the patterns. The metal press machine is not used in processing because there is no intent to sell the patterns used by the machine shop at a gain or profit.

18.58(6) *Exceptions.* Sales of the following machinery, equipment, or computers are not exempt:

a. Machinery, equipment, or computers assessed by the department of revenue pursuant to Iowa Code chapters 428, 433, 434, and 436 to 438, inclusive. For electric, gas, water, and other companies assessed under Iowa Code chapter 428, only property owned by the company is assessed by the department. For railroad, telephone, pipeline, and electric transmission lines companies, property leased to, as well as owned by, the company is assessed by the department. See 701—Chapters 71 and 77.

b. Hand tools. These are tools which can be held in the hand or hands and which are powered by human effort.

c. Point-of-sale equipment. See 701—subrule 71.1(7).

d. Vehicles subject to registration, except vehicles subject to registration which are directly and primarily used in recycling or reprocessing of waste products.

e. Machinery and equipment purchased by a person engaged in processing who is not a manufacturer. Restaurants, retail bakeries, food stores, and blacksmith shops are nonexclusive examples of businesses which process tangible personal property but are not manufacturers as that word is defined for the purposes of this rule.

f. The fact that the acquisition cost of rented or purchased machinery, equipment, or computers can be capitalized for the purposes of Iowa or federal income tax law is not an indication that their sale or rental would be exempt from tax under this rule.

18.58(7) *Lessor purchases of machinery, equipment, or computers.* The analysis regarding lessor purchases of farm machinery and equipment contained in subrule 18.44(3) explains that same problem regarding machinery, equipment, and computers.

18.58(8) *Designing or installing new industrial machinery or equipment.* The gross receipts from the services of designing or installing new industrial machinery or equipment are exempt from tax. The enumerated services of electrical or electronic installation are included in this exemption. To qualify for the exemption, the sale or rental of the machinery or equipment must be subject to exemption under

this rule. In addition, the machinery or equipment must be "new." For purposes of this subrule, "new" means never having been used or consumed by anyone. The exemption is not applicable to reconstructed, rebuilt, or repaired or previously owned machinery or equipment. The exemption is applicable to new machinery and equipment designed or installed for rental as well as for sale. The gross receipts from design or installation must be separately identified, charged separately, and reasonable in amount for the exemption to apply. A "computer" is not considered to be machinery or equipment, and its installation or design is not eligible for this exemption.

18.58(9) *Property used in recycling or reprocessing of waste products.* Gross receipts from the sale or rental of machinery (including vehicles subject to registration), equipment, or computers directly and primarily used in the recycling or reprocessing of waste products are exempt from tax. "Reprocessing" is not a subcategory of "processing." Reprocessing of waste products is an activity separate and independent from the processing of tangible personal property. Machinery or equipment used in the recycling or reprocessing of waste products includes, but is not limited to, compactors, balers, crushers, grinders, cutters, or shears directly and primarily used for this purpose. The sale of an end loader, forklift, truck, or other moving device is exempt from tax if the device is directly and primarily used in the movement of property which is an integral part of recycling or reprocessing. The sale of a bin for storage ordinarily would not be exempt from tax; storage without more activity would not be a part of recycling or reprocessing. Certain limits for exemption placed upon industrial machinery and equipment are not applicable to machinery and equipment used in recycling or reprocessing. For example, the exemption will apply even if the machinery, equipment or computer is purchased by a person other than an insurance company, financial institution or commercial enterprise. A person engaged in a profession or occupation could purchase property for direct and primary use in recycling or reprocessing of waste products and the exemption would apply.

a. By way of nonexclusive examples, recycling or reprocessing can begin when waste or material which would otherwise become waste is collected or separated. A vehicle used directly and primarily for collecting waste which will be recycled or reprocessed could be a vehicle used for an exempt purpose under this rule. Thus, the purchaser of a garbage truck could claim this exemption if the truck were directly and primarily used in recycling and not, for instance, in hauling garbage to a landfill. Machinery or equipment used to segregate waste from material to be recycled or reprocessed or used to separate various forms of materials which will be reprocessed (e.g., glass and aluminum) can also be used at the beginning of recycling or reprocessing.

b. Machinery and equipment directly and primarily used in recycling or reprocessing. See subrule 18.58(1) for the definition of "directly used" which is applicable to this subrule. The examples of machinery not directly used in processing set out in 18.58(5)*"a"* should be studied for guidance in determining whether similar machinery is or is not used in recycling or reprocessing; e.g., machinery used in plant security (see 18.58(5)*"a"*(4)) is not machinery directly used in recycling or reprocessing.

c. Integral use in recycling or reprocessing. Ordinarily, any operation or series of operations which does not transform waste or material which would otherwise become waste into new raw materials or products would not be a part of recycling or reprocessing. However, activities which do not do this, but are an "integral part" of recycling or reprocessing, are themselves recycling or reprocessing. For example, an endless belt which moves aluminum cans from a machine where they are shredded to a machine where the shredded aluminum is crushed into blocks would be an endless belt used in recycling or reprocessing and the exemption applies. See subrule 18.29(5) for a discussion of when an activity is an integral part of "processing." Some of that discussion is applicable to this subrule.

d. The end of recycling or reprocessing. Recycling or reprocessing ends when waste or a material which would otherwise become waste is in the form of raw material or in the form of a product. For instance, a corporation purchases a machine which grinds logs, stumps, pallets, crates, and other waste wood into wood chips. After grinding, the wood chips are sold and transported to various sites where the chips are dumped and spread out over the ground for use in erosion control. The machine which grinds the wood chips is a machine used in recycling. The truck which transports the wood chips from

the machine to the sites is not used in recycling because at the time the chips are placed in the truck they are in the form in which they will be used in erosion control.

This rule is intended to implement Iowa Code Supplement section 422.45(27) as amended by 1998 Iowa Acts, Senate File 2288; Iowa Code section 422.45(29); and Iowa Code chapter 423.

701—18.59(422,423) Exempt sales to nonprofit hospitals. On and after July 1, 1998, the gross receipts from sales or rentals of tangible personal property to and from the rendering, furnishing, or performing of services for a nonprofit hospital licensed under Iowa Code chapter 135B are exempt from tax if the property or service purchased is used in the operation of the hospital. A hospital is not entitled to claim a refund for tax paid by a contractor on the sale or use of tangible personal property or the performance of services in the fulfillment of a written construction contract with the hospital. However, see the circumstances set out below in which sales of goods, wares or merchandise, or taxable services to a hospital for use in the fulfillment of a construction contract, are exempt from Iowa tax.

For the purposes of this rule, the word "hospital" means a place which is devoted primarily to the maintenance and operation of facilities for diagnosis, treatment, or care, over a period exceeding 24 hours, of two or more nonrelated individuals suffering from illness, injury, or a medical condition (such as pregnancy). The word "hospital" includes general hospitals, specialized hospitals (e.g., pediatric, mental, and orthopedic hospitals, and cancer treatment centers), sanatoriums, and other hospitals licensed under Iowa Code chapter 135B. Also included are institutions, places, buildings, or agencies in which any accommodation is primarily maintained, furnished, or offered for the care, over a period exceeding 24 hours, of two or more nonrelated aged or infirm persons requiring or receiving chronic or convalescent care. Excluded from the meaning of the term "hospital" are institutions for well children; day nursery and child care centers; foster boarding homes and houses; homes for handicapped children; homes, houses, or institutions for aged persons which limit their function to providing food, lodging, and provide no medical or nursing care, and house no bedridden person; dispensaries or first-aid stations maintained for the care of employees, students, customers, members of any commercial or industrial plan, educational institution, or convent; freestanding hospice facilities which operate a hospice program in accordance with 42 CFR § 418 and freestanding clinics which do not provide diagnosis, treatment, or care for periods exceeding 24 hours. This list of inclusions and exclusions is not exclusive. For additional information see 481—Chapter 51.

Ordinarily, goods, wares, or merchandise (such as building materials, supplies, and equipment; see rule 701—19.3(422,423) for definitions) which is purchased by a hospital and used by a contractor in the fulfillment of a written contract with the hospital cannot be purchased exempt from Iowa tax. The goods, wares, and merchandise used in the fulfillment of these construction contracts are not used in the "operation" of a hospital but in activities at least one step removed from that operation. See *Polich v. Anderson-Robinson Coal Co.,* 227 Iowa 553, 288 N.W. 650 (1939).

However, for a limited period, the gross receipts from all sales of goods, wares, or merchandise or from services rendered, furnished, or performed are exempt from tax (or a claim for refund may be filed for tax paid) if the tangible personal property or the taxable service is used in the fulfillment of a written construction contract with a hospital and all of the following circumstances exist:

1. Deliveries under contracts of sale of the goods, wares, or merchandise occurred or the taxable services were rendered, furnished, or performed between July 1, 1998, and December 31, 2001, inclusive. A claim for refund may be filed for any tax paid for this period, so long as the claim is filed prior to April 1, 2002, and the requirements of "2" and "3" below are also met. Claims for refunds of tax, interest, or penalty paid for the period of July 1, 1998, to December 31, 2001, are limited to $25,000 in the aggregate. If the amount of the claimed refunds for this period totals more than $25,000, the department must prorate the $25,000 among all claimants in relation to the amounts of the claimants' valid claims.

2. The written construction contract was entered into prior to December 31, 1999, or bonds to fund the construction were issued prior to December 31, 1999.

3. The property or services were purchased directly by the hospital or by a contractor as an agent of the hospital. For the purposes of this exemption, no hospital can retroactively designate a contractor to be its agent and by this means transform a contractor's purchases of goods, wares, merchandise, or

services into its own. Upon the department's request, a hospital claiming that a contractor is or has been its purchasing agent must present suitable evidence of a principal-agent relationship between itself and the contractor during any period for which exempt sales or a refund is claimed. The best evidence of a principal and purchasing agent relationship is a written document setting out the terms of the relationship and the period for which the agency is in effect; however, other evidence, which is the equivalent of a written document in reliability, will be considered by the department when necessary.

This rule is intended to implement Iowa Code Supplement section 422.45 as amended by 2000 Iowa Acts, chapter 1207.

701—18.60(422,423) Exempt sales of gases used in the manufacturing process. Effective May 24, 1999, but retroactive to January 1, 1991, sales of argon and other similar gases to be used in the manufacturing process are exempt from tax. For the purposes of this rule, only inert gases are gases which are similar to argon. An "inert gas" is any gas which is normally chemically inactive. It will not support combustion and cannot be used as either a fuel or as an oxidizer. Argon, nitrogen, carbon dioxide, helium, neon, krypton, and xenon are nonexclusive examples of inert gases. Oxygen, hydrogen, and methane are nonexclusive examples of gases which are not inert. These sales are exempt only if the gas is purchased by a "manufacturer," for used in "processing," as those terms are defined in subrule 18.45(1), for the period prior to July 1, 1997, and as those terms are defined in subrule 18.58(1) for the period beginning July 1, 1997.

This rule is intended to implement Iowa Code section 422.45 as amended by 1999 Iowa Acts, chapter 170.

701—18.61(422,423) Exclusion from tax for property delivered by certain media. For the period beginning March 15, 1995, a taxable "sale" of tangible personal property does not occur if the substance of the transaction is delivered to the purchaser digitally, electronically, or by utilizing cable, radio waves, microwaves, satellites, or fiber optics. This exclusion from tax is not applicable to any leasing of tangible personal property, a lease not being a "sale" of tangible personal property for the purposes of Iowa sales and use tax law, *Cedar Valley Leasing, Inc. v. Iowa Department of Revenue,* 274 N.W.2d 357 (Iowa 1979). The exclusion is also not applicable to property delivered by any medium other than those listed above. Sales of items such as artwork, drawings, photographs, music, electronic greeting cards, "canned" software (see subrule 18.34(1)), entertainment properties (e.g., films, concerts, books, and television and radio programs), and all other digitized products delivered as described above are not taxable, except the exclusion does not repeal by implication the tax on the service of providing pay television. See rule 701—26.56(422). If an order for a product is placed by way of any of the media described above but the product ordered is delivered by conventional, physical means, e.g., the U.S. Postal Service or common carrier, sale of the product is not excluded from tax under this rule.

This rule is intended to implement Iowa Code Supplement section 422.43 as amended by 2002 Iowa Acts, Senate File 2321.

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CHAPTER 19
SALES AND USE TAX ON CONSTRUCTION ACTIVITIES
[Prior to 12/17/86, Revenue Department[730]]

701—19.1(422,423) General information. Iowa Code section 422.43 imposes a tax upon the gross receipts from the sales of tangible personal property, consisting of goods, wares or merchandise sold at retail in this state to consumers and users. Also subject to tax are certain enumerated services. Those relating to the construction industry include carpentry; roof, shingle and glass repair; electrical repair and installation; equipment and other tangible personal property rental; excavating and grading; house and building moving; laboratory testing; landscaping; machinery operator services; machine repair of all kinds; oilers and lubricators; painting, papering, and interior decorating; pipe fitting and plumbing; wood preparations; termite, bug, roach, and pest eradicators; tin and sheet metal repair; welding; well drilling; and wrecking services. Under Iowa law, contractors are consumers or users of certain tangible personal property. Contractors may also be retailers of tangible personal property and taxable enumerated services. It should be noted that these services are exempt from taxation when performed on or in connection with new construction, reconstruction, alteration, expansion, or remodeling of a building or structure. The services of a general building contractor, architect or engineer are therefore exempt from tax when performed on or in connection with new construction, reconstruction, alteration, expansion, or remodeling. (Codified in section 422.43 of the 1979 Code.) See rule 701—26.2(422). For the purposes of this exemption, a structure is defined as that which is artificially built up or composed of parts joined together in some definite manner and which also has some obvious or apparent functional use or purpose. Nonexclusive examples of structures include: buildings; roads, whether paved or otherwise; dikes; drainage ditches; and ponds. See rule 19.11(422,423) relating to structures.

This chapter details the obligation of contractors, contractor-retailers, retailers, and repairpersons to pay or collect sales tax on the gross receipts from sales of building materials, supplies, equipment, and other tangible personal property and the obligation of these parties to collect tax or claim exemption for their performances of taxable services. How one is classified, whether as a contractor, contractor-retailer, retailer, or repairperson is the basis for determining many of those obligations. It can be very difficult for a person starting a business to determine if that business will be engaged in contracting, retailing, a combination of the two, or providing repair services. However, one status must be chosen. Any reasonable assessment of a new business's status will be honored by the department. A status, once chosen, should not be changed, unless it has become clear from an extended course of dealing that the business has become something other than what it was established to be. For instance, if a business is founded to engage in contracting and purchases construction materials based on the fact that it is a contractor, but the founder must sell construction materials at retail if the business is to survive, and after two years' operation half the revenue is from construction contracts and half from retail sales, then the business has become a contractor-retailer and henceforth should purchase construction materials based on that status. Changing the status of a business from job to job to avoid the obligation to pay or collect tax is not a lawful activity.

Iowa Code section 423.2 imposes a tax that is assessed upon tangible personal property purchased for use in this state and on taxable services which are rendered, furnished or performed in Iowa or where the product or result of such service is used in Iowa. "Use" of tangible personal property in Iowa is defined to mean and include the exercise by any person of any right or power over tangible personal property incident to the ownership of that property.

See 701—Chapters 12 and 30 of the rules regarding the filing of returns, penalty and interest.

701—19.2(422,423) Contractors are consumers of building materials, supplies, and equipment by statute. Iowa Code subsection 422.42(15) provides that 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 in whatever quantity sold. This means that a contractor, subcontractor, or builder cannot claim an exemption for resale when purchasing building materials or supplies even if the contractor, subcontractor, or builder later separately itemizes

material and labor charges for construction contracts. Building materials and supplies would generally consist of items which are incorporated into real property, lose their identity as tangible personal property and cannot be removed without altering the realty, or which are consumed by the contractor during the performance of the construction contract. See subrules 19.3(1), 19.3(2) and 19.3(3). Building equipment would ordinarily consist of machinery and tools. See subrule 19.3(4). The fact that a contractor, subcontractor or builder holds an Iowa retail sales tax permit and has a tax number does not entitle that person to purchase building materials, supplies and equipment without paying sales tax to the vendor. See rule 19.3(422,423) and rule 19.4(422,423).

A contractor (general, special or subcontractor) when bidding on a contract should anticipate that sales or use taxes will increase the cost of materials by the tax. This is true even if the contract is with an entity (e.g., federal, state, or county government, or a private, nonprofit educational institution) whose purchases are exempt from sales tax. See rule 19.12(422,423). The necessary allowance should be made in figuring the bid inasmuch as the contractor will be held responsible for paying the tax on building supplies, materials and equipment. The tax should not be identified as a separate item in the formal bid since the contractor cannot charge sales tax.

Effective July 1, 1992, the sales and use tax rate increased from 4 percent to 5 percent. The right of construction contractors previously to make application to the department for a refund of the additional 1 percent sales or use tax paid on goods, wares or merchandise incorporated into an improvement to real estate in the fulfillment of a written contract fully executed prior to July 1, 1992, has been rescinded effective July 1, 2001.

This rule is intended to implement Iowa Code sections 421.14, 422.43, 422.47 as amended by 2001 Iowa Acts, House File 715, and 423.2.

701—19.3(422,423) Sales of building materials, supplies, and equipment to contractors, subcontractors, builders or owners. Suppliers or dealers who sell materials and supplies to contractors, subcontractors, builders or owners are required to collect Iowa sales tax from those persons based upon the receipts from such sales. The fact that a contractor, subcontractor, or builder holds an Iowa retail sales tax permit and has a tax number does not entitle that person to purchase building materials, supplies and equipment without paying sales tax to the vendor. See rules 19.2(422,423) and 19.4(422,423). Purchase discounts are not part of the sales price and are not part of the base for computing sales and use tax provided the retailer has not collected the tax on the full selling price. See rule 701—15.6(422,423). Materials purchased out of state for use in Iowa are subject to the Iowa use tax which is payable in the quarter the materials are delivered into the state. Tax is imposed on the contractor, subcontractor or builder even though the contract is with a governmental unit or a nonprofit educational institution. See Iowa Code section 422.45(7) and rule 19.12(422,423).

19.3(1) *Building materials.* The term "building materials" as used in this rule means materials used in construction work, and is not limited to materials used in constructing a building with sides and covering. The term may also include any type of materials used for improvement of the premises or anything essential to the completion of a building or structure for the use intended. *State v. James A. Head & Company, Inc.,* 306 So. 2d 5 (Ala. 1974).

19.3(2) *Building supplies.* The term "building supplies" as used in this rule means anything that is furnished for, and used directly in the carrying on of the work of an owner, contractor, subcontractor or builder and which is entirely consumed by said contractor. Such items do not have to enter into and become a physical part of the structure like materials, but they do become as much a part of the structure as the labor which is performed on it. *United States Fidelity & Guaranty Co. v. Feenaughty Machinery Co.,* 85 p.2d 1085, 197 Wash. 569.

19.3(3) *Typical items.* While not intended to be inclusive, the following is a list of typical items regarded as building materials and supplies:

Asphalt	Lubricants	Sheet metal
Bricks	Lumber	Steel
Builders' hardware	Macadam	Stone

Caulking material
Cement
Central air conditioning
Cleaning compounds
Conduit
Doors
Ducts
Electric wiring, connections, and switching devices
Fencing materials
Flooring*
Glass
Gravel
Insulation
Lath
Lead
Lighting fixtures
Lime
Linoleum*
Millwork
Modular and mobile homes
Mortar
Oil
Paint
Paper
Piping, valves, and pipe fittings
Plaster
Plates and rods used to anchor masonry foundations
Plumbing supplies
Polyethylene covers
Power poles, towers, and lines
Putty
Reinforcing mesh
Rock salt
Roofing
Rope
Sand
Stucco
Tile
Wallboard
Wall coping
Water conditioners
Weather stripping
Windows
Window screens
Wire netting and screen
Wood preserver

*Floor coverings which are shaped to fit a particular room or area and which are attached to the supporting floor with cement, tacks or tack strips or by some other method making a permanent attachment are considered to be building materials. See rule 701—16.48(422,423) for an exception concerning carpeting. Carpeting (whether attached to the floor or not) is not treated as a building material for the purposes of this chapter. Rugs, mats and linoleum types of floor coverings which are not attached but which are simply laid on finished floors are not considered to be building materials either.

19.3(4) *Building equipment.* The term "building equipment" as used in this rule means any vehicle, machine, tool, implement or other device used by a contractor in erecting structures for others, or reconstructing, altering, expanding or remodeling property of others which does not become a physical component part of the property upon which work is performed, and which is not necessarily consumed in the performance of such work. "Building equipment" includes, but is not limited to, such items as:

Compressors
Drill presses
Electric generators
Forms
Hand tools
Lathes
Replacement parts for equipment
Scaffolds
Tools
Vehicles including grading, lifting and excavating vehicles

Construction equipment purchased by a contractor which is intended for use in the performance of an Iowa construction contract is subject to the Iowa sales or use tax. However, equipment which is rented for use on or in connection with an Iowa construction contract can be rented without an obligation for Iowa sales or use taxes. Rented equipment is subject to tax on the purchase price at the time of purchase because it is not subject to the service tax of equipment rental. See rules 18.36(422,423) and 26.18(422,423) relating to equipment rental and the leasing of tangible personal property.

701—19.4(422,423) Contractors, subcontractors or builders who are retailers. In some instances, contractors, subcontractors and builders are in a dual business which includes reselling to the general public on a recurring "over-the-counter" basis, the same type of building materials and supplies which are used by them in their own construction work. A person operating in such a manner is referred

to in this rule as a contractor-retailer. Any person who is engaged in the performance of construction contracts and who also sells building materials or other items at retail is obligated to examine the person's business and determine if it is that of a contractor or a contractor-retailer (see below). A sale by a contractor-retailer of building materials, supplies and equipment which does not provide for installation of the merchandise sold is considered a retail sale and subject to sales tax. Conversely, a sale by a contractor-retailer of building supplies, materials and equipment which provides for installation of the merchandise is considered a construction contract and tax shall be paid by the contractor-retailer based upon the cost of materials at the time the materials are withdrawn from inventory for use in a construction contract performed in Iowa. When a contractor-retailer does repair work, the contractor-retailer is acting as a retailer and not a contractor and must collect tax on the price charged for materials used in the repair and on the price charged for any labor used in the repair which is a taxable service or on the entire charge if materials and labor are not separately invoiced. See rules 701—18.31(422,423) and 19.13(422,423).

The following is a list of the characteristics of the usual contractor-retailer:

1. A contractor-retailer is a business which makes frequent retail sales to the public or to other contractors and also engages in the performance of construction contracts (see rule 701—19.7(422,423)). In determining whether a business is a contractor-retailer or a retailer only, the department looks to the totality of business activity and not only to one portion of the business's activity. Thus, the maintenance of a small retail outlet does not automatically transform a contractor-retailer into a retailer, and a large number of retail sales without a retail outlet can qualify a business as a contractor-retailer.

2. A business cannot claim the status of a contractor-retailer unless the business is in possession of a valid sales tax permit to report tax due from retail sales and from withdrawals of materials or supplies from inventory for use in construction contracts.

3. A contractor-retailer must purchase building materials, supplies, and equipment placed in its inventory for resale; the contractor-retailer should not pay sales or use tax to its suppliers for these items. Instead, the contractor-retailer should provide suppliers with valid resale exemption certificates. When a valid certificate is furnished, the vendor is relieved from the responsibility of collecting the tax if the purchaser has demonstrated that the purchaser is a contractor-retailer under the provisions of this rule. See rules 701—15.3(422,423) and 19.19(422,423) for a detailed explanation of this matter.

4. A contractor-retailer purchasing construction material which will not be placed in its inventory purchases that material subject to Iowa sales or use tax. For example, if a contractor-retailer purchases wet concrete for use in a construction project, that purchase is taxable.

5. A contractor-retailer usually has a retail outlet, but if not, frequent sales to individuals or other contractors qualify a business as a contractor-retailer.

6. Contractor-retailers do not pay tax on materials withdrawn from inventory for use in construction projects performed outside Iowa. See Iowa Code section 422.42(15).

The business records of a contractor-retailer must clearly reflect the use made of items purchased and the records must be in such form that the director can readily determine that the proper sales and use tax liability is being reported and paid.

The following examples are offered to illustrate the responsibility for paying and remitting sales tax under this rule:

EXAMPLE 1. ABC Company operates a retail outlet that sells lumber and other building materials and supplies. ABC Company is also a contractor which builds residential and commercial structures. ABC Company would be considered a contractor-retailer and would, therefore, purchase all inventory items for resale. Those items which are used in the performance of a construction contract would be subject to tax in the period that they are withdrawn from inventory. The tax would be computed on the cost of the items withdrawn from inventory. Those items which are sold over-the-counter in the retail outlets would be subject to tax at the time of sale. The tax would be computed on the over-the-counter selling price.

EXAMPLE 2. EFG Company is a mechanical contractor and has no retail outlets. EFG Company rarely sells any of its inventory to other persons or to other contractors. EFG Company would not be considered a contractor-retailer under this rule. However, EFG Company would be considered a contractor and must pay tax to its vendor at the time it purchases any building materials, supplies and

equipment. However, on those rare occasions, when an inventory item is sold to another person or to another contractor, tax must be collected at the time of sale, therefore, EFG Company should have a sales tax permit. An adjustment can be made to the sales tax report by taking a credit for tax previously paid on the item sold.

EXAMPLE 3. Home Town Construction Company is owned and operated by two individuals in a rural Iowa farming community. They do not have a retail outlet but they frequently make sales of building materials which are in their inventory to local residents. Home Town Construction Company would be a contractor-retailer and could purchase all inventory items for resale. Those items which are used in the performance of a construction contract would be subject to tax in the period they are withdrawn from inventory. The tax would be computed on the cost of the items withdrawn from inventory. Those items which are sold to residents would be subject to the tax at the time of sale. The tax would be computed on the selling price of the items.

EXAMPLE 4. Down Home Construction Company is operated by two individuals in a rural Iowa farming community. They do not have a retail outlet and rarely make sales of building materials from their inventory to local residents. Down Home Construction Company would not be considered a contractor-retailer under this rule. Rather, Down Home Construction Company would be considered a contractor and must pay tax to its vendor at the time it purchases any building materials, supplies and equipment. When sales are made to local residents, tax must be collected at the time of sale; therefore, Down Home Construction Company should have a sales tax permit. However, Down Home Construction Company can adjust its sales tax report by taking a credit for tax paid to its vendor on the item sold to the local resident.

EXAMPLE 5. Intown Home Construction Company places modular homes on slabs or basement foundations, makes electrical, plumbing and other connections, and otherwise prepares the modular homes for sale as real estate. Intown also has a sales tax permit, maintains an inventory of modular homes for sale, and sells homes from the inventory as tangible personal property to owners who later convert the property to real estate. Intown is a contractor-retailer and is obligated to pay or collect sales tax, respectively, at the time a modular home is withdrawn from inventory for use as material in a construction contract or at the time a modular home is withdrawn from inventory for sale to an owner. See rule 701—17.22(422,423) for an explanation of the basis on which tax is computed.

EXAMPLE 6. Smith's Plumbing has a retail store in Davenport, but it also installs plumbing fixtures and lines in new construction and remodeling projects. Plumbing supplies that are taken from an inventory in Davenport for a new home being built in Rock Island, Illinois, are withdrawn exempt from Iowa sales tax because the construction contract is performed outside Iowa. However, those supplies may be subject to Illinois sales or use tax.

701—19.5(422,423) Building materials, supplies, and equipment used in the performance of construction contracts within and outside Iowa.

19.5(1) The use of building materials, supplies, or equipment in the performance of construction contracts by the manufacturer outside Iowa is not a sale of tangible personal property and, therefore, is not a taxable event. The use of tangible personal property as building materials, supplies, or equipment by the manufacturer in the performance of construction contracts in Iowa is a sale at retail and a taxable event. The tax is computed on the manufacturer's fabricated cost or cost of production. See rule 701—16.3(422,423) for a characterization of the term manufacturer's "fabricated cost."

19.5(2) Prior to July 1, 1987, a contractor-retailer's withdrawal of material from inventory kept in this state for use in construction contracts performed outside Iowa is subject to tax. On and after July 1, 1987, a withdrawal of materials from inventory for use in construction contracts outside this state is not a taxable event.

19.5(3) A contractor is a consumer by statute. A contractor's purchase of materials for use in a construction contract is subject to tax whether the materials are purchased for use in construction contracts performed in Iowa or outside this state.

19.5(4) A manufacturer's purchase of tangible personal property consumed as building material in the manufacturer's or the manufacturer's subcontractor's performance of construction contracts within

Iowa is taxable. The tax is computed on the fabricated cost or cost of production of the materials. See rule 701—16.3(422,423) for a characterization of the term "fabricated cost." The purchase of tangible personal property consumed by a manufacturer as building material in the manufacturer's or the manufacturer's subcontractor's performance of a construction contract outside Iowa is not subject to tax.

19.5(5) See rule 701—32.8(423) for an exemption from use tax for building materials, supplies, or equipment purchased outside Iowa, brought into this state, and subsequently used in the performance of a construction contract outside this state.

This rule is intended to implement Iowa Code sections 422.42(12) and 422.42(13).

701—19.6(422,423) Prefabricated structures.

19.6(1) *Basic concepts and general rules.* A "prefabricated structure" is any structure assembled in a factory and capable of transport to the location where it will be used in the performance of a construction contract by placement on a foundation either by the buyer or a designated contractor. The term "prefabricated structure" includes a "modular home" as defined in rule 701—17.22(422,423), a mobile home whether or not sold subject to the issuance of a certificate of title, "manufactured housing" as defined in rule 701—33.10(423), sectionalized housing, precut housing packages, and panelized construction. With a few major exceptions (see 19.6(2) below regarding the "60 percent rule" and rule 701—33.10(423) regarding the taxation of manufactured housing while it is real property), the sales and use tax treatment of prefabricated structures generally follows the treatment of construction materials: Tax is due when those structures are sold to or used by owners, contractors, subcontractors, or builders. Sales of prefabricated structures which have not been erected on a foundation are considered sales of tangible personal property and thus are taxable at the time of retail sale. The usual basis for computing sales or use tax is the purchase price charged to a consumer or user by the seller of a prefabricated structure. *Custom Built Homes Co. v. Kansas State Commission of Revenue and Taxation,* 184 Kan. 31, 334 P.2d 808 (1959). Sales or use tax is due on the full purchase price when a prefabricated structure is delivered under a contract for sale or sold for use in Iowa. *Dodgen Industries Inc. v. Iowa State Tax Commission,* 160 N.W.2d 289 (Iowa 1968).

19.6(2) *Exceptions to the general rules.* There are a number of exceptions to the general rules stated above in 19.6(1). Those exceptions are applicable to modular and mobile homes and manufactured housing. They are explained as follows.

a. *Modular homes.* Only 60 percent of the gross receipts from the sale of a modular home are subject to Iowa tax. See rule 701—17.22(422,423). This rule is applicable only to a "modular home" as that phrase is defined in rule 701—17.22(422,423) and not to other types of prefabricated structures which do not meet the definition of the term such as sectionalized housing or panelized construction. Also, the rule is not applicable to the sale of materials used in the assembly of a modular home, only to the sale of the finished product.

b. *Mobile homes and manufactured housing.* Iowa use tax and not Iowa sales tax is imposed on mobile homes or manufactured housing sold subject to the issuance of a certificate of title, and, similar to 19.6(2)*"a"* above, use tax is imposed only upon 60 percent of the purchase price of these mobile homes or manufactured housing. See rule 701—32.3(423). All mobile homes and manufactured housing sold in Iowa or sold outside Iowa for use in this state are sold subject to Iowa use tax, whether sold for placement within or outside a mobile home park; see Iowa Code chapters 423 and 435.

19.6(3) *Tax consequences of sales of modular homes by various parties, some operating in a dual capacity.*

a. A retailer (dealer) who is not additionally a contractor or manufacturer of modular homes purchases those homes tax-free from a wholesaler or manufacturer for subsequent resale to contractors or owners. Tax must be collected when the dealer sells the modular home to an owner or contractor.

b. A contractor who is not a dealer must pay tax when purchasing a modular home for use in a construction contract or for some other purpose. A contractor's sale of a modular home to an owner or another contractor is treated as explained in Examples 2 and 4 of rule 19.4(422,423).

c. A dealer who is also a contractor will purchase homes tax-free for inclusion in its inventory. Tax is imposed when the dealer withdraws a home from inventory for sale or use in the performance of a construction contract as explained in rule 19.4(422,423).

d. A manufacturer that acts as its own dealer and sells its own modular homes at retail to contractors or owners will collect tax on the gross receipts from its sales of those modular homes to its customers. This situation is in contrast to that described in subrule 19.6(4) below in which a manufacturer uses its own modular homes in the performance of construction contracts and the tax due is computed on a sum other than gross receipts from the sale of a home.

What is stated in this subrule concerning sales of modular homes is generally applicable to the use tax on mobile homes and manufactured housing. However, one distinct difference is that mobile homes and manufactured housing are seldom, if ever, purchased by a dealer for any subsequent use in the performance of construction contracts. A dealer will often purchase a mobile home or manufactured housing for subsequent resale to a customer as tangible personal property and then will place or install the mobile home or manufactured housing on a site prepared by the customer. This is not the performance of a construction contract (see rule 19.7(422,423)), and the dealer is a retailer who installs tangible personal property and is not a construction contractor.

19.6(4) *Manufacturers who perform construction contracts.* When companies whose principal business is the manufacture of prefabricated structures use those structures in the performance of construction contracts, this use is treated as a retail sale of the structures on the manufacturer's part. See rule 701—16.3(422,423) for a detailed description of the sales tax treatment of this sort of transaction. The 60 percent rule (see 19.6(2) above) is not applicable when calculating the amount of tax owed by a manufacturer.

19.6(5) *Examples.* The following examples are intended to illustrate who must collect or remit sales or use tax when a manufacturer sells a modular home to a contractor or owner, or acts as a contractor in erecting the home. The incidence of tax depends on several factors, such as the nature of the manufacturer's business, the point of delivery, the contractual agreement for erection and whether or not a sale for resale has occurred.

EXAMPLE 1. The manufacturer is located outside Iowa. The manufacturer contracts with an Iowa customer to build a home in its factory. The manufacturer also contracts to completely erect the home, install the furnace, and do electrical and other necessary work to make the home ready for occupancy. The main source of the manufacturer's income relates to on-site construction. The manufacturer has paid a sales tax equal to Iowa tax in its state of residency. The manufacturer would be considered to be performing a construction contract in Iowa and would owe use tax in Iowa; however, a sales tax credit would be allowed for tax paid to another state.

EXAMPLE 2. The manufacturer is located outside Iowa. An Iowa unrelated builder/dealer contracts with the customer for the home and then contracts with the manufacturer for construction, delivery, and installation on the customer's foundation. The manufacturer delivers the home into Iowa on its own truck. The customer, by contractual agreement, is obligated to pay for the home on delivery of the property so the sale takes place in Iowa. In this situation, the manufacturer is involved in the sale of tangible personal property rather than the sale of real estate and must collect Iowa sales tax on 60 percent of the selling price to the Iowa builder/dealer.

EXAMPLE 3. The manufacturer is located outside Iowa. The manufacturer contracts to sell a home to a customer (owner) in Iowa. The manufacturer hires a common carrier to deliver the home to the Iowa customer. The manufacturer has no activity in Iowa that would create a "nexus" requiring the manufacturer to collect Iowa tax. In this situation the Iowa customer is required to remit use tax on 60 percent of the purchase price of the home.

EXAMPLE 4. The manufacturer may be located in Iowa or outside Iowa. The manufacturer sells a home to a dealer in Iowa who will resell the home to the final customer. The manufacturer may deliver the home or delivery may be made by a common carrier. The manufacturer has no contractual obligation for erection. In this situation the manufacturer is making a sale for resale and is not required to collect tax. The manufacturer must have a valid resale certificate on file from the dealer. The dealer, if in Iowa, would be required to collect tax when the home is sold.

EXAMPLE 5. The manufacturer is located in Iowa. The manufacturer sells a home to a customer F.O.B. plant site. The manufacturer, under a separate invoice, agrees to transport the home to the job site and also do the setup of the home.

The manufacturer should collect tax on 60 percent of the selling price of the home irrespective of where final delivery occurs, as legal delivery occurs in Iowa. The transportation and setup charge are not taxable when separately contracted for and separately invoiced. If these charges are not separately stated and the sale contract is for a lump sum, the tax is computed on 60 percent of the lump sum selling price.

EXAMPLE 6. The manufacturer is located in Iowa. The manufacturer contracts to furnish, deliver, and perform the setup on a home in a state other than Iowa. The manufacturer withdraws the home from inventory and transports the home to the other state for setup. In this example, the Iowa manufacturer does not owe any Iowa tax because Iowa Code section 422.42(12) exempts building materials and supplies that manufacturers withdraw from inventory for construction outside Iowa.

EXAMPLE 7. The manufacturer is located in Iowa. The manufacturer sells a home to an Iowa customer and agrees, under separate contract, to transport the home to the job site and perform the setup. The manufacturer should collect tax on 60 percent of the selling price of the home. The customer also wanted a garage. The manufacturer agreed to sell the lumber, nails, and shingles to the customer who would build the garage. This sale would be considered a sale at retail and the manufacturer should collect tax on the entire selling price of these materials. The same would be true if the manufacturer sold appliances separate from the sale of the home; sales tax would be due on the entire selling price of the appliances.

EXAMPLE 8. The manufacturer may be located inside or outside Iowa. The manufacturer sells a modular home to a dealer who is a general contractor. The dealer subcontracts the work of placing the home on a foundation to various third parties, who transport the home to its site, excavate for and pour the concrete slab, and perform plumbing, electrical hookup, and all other services which are part of the construction contract for placing the modular home at its location. Since the sale of the modular home is to a dealer who is a contractor, the manufacturer will collect and the dealer will pay tax on 60 percent of the modular home's invoice price.

701—19.7(422,423) Types of construction contracts. The term "construction contract" is defined as an agreement under the terms of which an individual, corporation, partnership or other entity agrees to furnish the necessary building or structural materials, supplies, equipment or fixtures and to erect the same on the project site for a second party known as a sponsor. Nonexclusive examples of the types of construction contracts would include: lump-sum contracts; cost plus contracts; time and material contracts; unit price contracts; guaranteed maximum or upset price contracts; construction management contracts; design built contracts; and turnkey contracts.

The following is a nonexclusive list of activities and items which could fall within the meaning of a construction contract or are generally associated with new construction, reconstruction, alteration, or expansion of a building or structure. The list is provided merely for the purpose of illustration. It should not be used to distinguish machinery and equipment from real property or structures since such a determination is factual. See rules 19.10(422,423) and 19.11(422,423) for details.

Ash removal equipment (installed as distinguished from portable units).

Automatic sprinkler systems (fire protection).

Awnings and venetian blinds which become attached to real property.

Boilers (installed as distinguished from portable units).

Brick work.

Builder's hardware.

Burglar alarm and fire alarm fixtures.

Caulking materials work.

Cement work.

Central air conditioner installation.

Coal handling equipment (installed as distinguished from portable units).

Concrete work.
Conveying systems (installed as distinguished from portable units).
Drapery installation.
Electric conduit work and items relating thereto.
Electric distribution lines.
Electric transmission lines.
Floor covering which is permanently installed. See rule 701—16.48(422,423) for an exception to this regarding carpeting.
Flooring work.
Furnaces, heating boilers and heating units.
Furniture, prefabricated cabinets, counters and lockers (installed as distinguished from portable units).
Glass and glazing work.
Gravel work (excluding landscaping).
Installation of modular homes on foundations.
Lathing work.
Lead work.
Lighting fixtures.
Lime work.
Lumber and carpenter works.
Macadam work.
Millwork installation.
Mortar work.
Oil work.
Paint booths and spray booths (installed as distinguished from portable units).
Painting work.
Paneling work.
Papering work.
Passenger and freight elevators.
Piping valves and pipe fitting work.
Plastering work.
Plumbing work.
Putty work.
Refrigeration units (central plants installation as distinguished from portable units).
Reinforcing mesh work.
Road construction (concrete, bituminous, gravel, etc.).
Roofing work.
Sheet metal work.
Sign installation (other than portable sign installation).
Steel work.
Stone work.
Stucco work.
Tile work, ceiling, floor and walls.
Underground gas mains.
Underground sewage disposal.
Underground water mains.
Vault doors and equipment.
Wallboard work.
Wall coping work.
Wallpaper work.
Water heater and softener installation.
Weather stripping work.

Wire net screen work.
Wood preserving work.

701—19.8(422,423) Machinery and equipment sales contracts with installation. Machinery and equipment sales contracts with installation are transactions which are considered a sale of tangible personal property to a final consumer. Therefore, the individual who sells the equipment with installation must purchase the machinery and equipment tax-free as a purchase for resale. (This rule should not be confused with subrule 19.3(3) regarding building equipment.) The contract should itemize the sales tax separately. If a contractor wishes to avoid an itemization of sales and use tax on machinery and equipment which remains tangible personal property, the contractor can do so by figuring the tax as a general overhead expense and including a statement in the contract and related invoices that "sales tax is included in the contract price."

If the sales transaction is one completed out of state and shipped in interstate commerce to a consumer or a user in Iowa, and not otherwise exempt from tax, the final purchaser is required to pay Iowa use tax on the purchase price of the machinery and equipment.

In a "mixed contract" (a construction contract mingled with a machinery and equipment sales contract), the elements of the contract should be separated for sales tax purposes. See rule 19.9(422,423).

Certain services which are enumerated in Iowa Code section 422.43 are subject to tax when performed under a contract for the installation of machinery and equipment which is not done in connection with new construction, reconstruction, alteration, expansion or remodeling of a building or structure. See rule 701—15.14(422,423) relating to installation charges. Examples of these services are: electrical installation; plumbing; welding; and pipe fitting. Other labor charges for job site installation which do not involve a taxable enumerated service are not subject to tax if the charges are separately contracted or, if no written contract exists, are separately itemized on the billing from the seller to the purchaser.

EXAMPLE: Company B contracts with Company A to furnish and install a portable conveyor unit in Company A's new building. Company B can purchase the portable conveyor unit tax-free because the portable conveyor unit maintains its identity as tangible personal property after installation and does not become a component part of the real property. Company B would then charge tax to Company A on the sale of the portable conveyor unit. Installation charges would be part of the total gross receipts subject to tax unless they are separately contracted, or if no written contract exists, separately itemized on the billing from Company B to Company A.

701—19.9(422,423) Construction contracts with equipment sales (mixed contracts). Construction contracts with equipment sales, commonly known as mixed contracts, place a dual burden on the contractor as a contractor is a consumer of construction materials and also a retailer of the machinery and equipment. As a consumer by statute of construction building materials, supplies, and building equipment, the contractor is required to pay sales tax to the supplier at the time of purchase or remit use tax to the department if purchasing building materials, supplies, and building equipment from an out-of-state supplier. See 701—Chapter 30 of the rules regarding use taxes. Machinery and equipment must be purchased for resale by the contractor if it does not become real property. This means that the contractor does not pay tax to a supplier at the time of purchase of machinery and equipment, but instead, the contractor is responsible for collecting sales tax on the selling price from a sponsor and remitting it to the department.

EXAMPLE: Company A contracts with Company B to have Company B build a new building and install all of the production machinery and equipment for the new building. Company B must pay tax on its purchases of building materials and supplies which lose their identity as tangible personal property and become a component part of the real property. Company B also purchases some refrigeration units for the new building which maintain their identity as tangible personal property. These units must be purchased tax-free by Company B because they will be resold. Company B would then charge Company A the tax on the units which retain their identity as tangible personal property. The installation charges for the units which remain as tangible personal property would be part of the total gross receipts subject

to tax unless they are separately contracted or, if no written contract exists, are separately itemized on the billing from Company B to Company A.

When a mixed construction contract is let for a lump-sum amount, the machinery and equipment furnished and installed shall be considered, for the purposes of this rule only, as being sold by the contractor for an amount equal to the cost of the machinery and equipment.

Persons required to collect sales tax in Iowa under machinery and equipment contracts or a mixed contract are required to have a sales tax or a retailer's use tax permit.

701—19.10(422,423) Distinguishing machinery and equipment from real property. A construction contract may include many activities, but it does not include a contract for the sale and installation of machinery or equipment. Machinery and equipment includes property that is tangible personal property when it is purchased and remains tangible personal property after installation. Generally, tangible personal property can be moved without causing damage or injury to itself or to the structure, it does not bear the weight of the structure, and it does not in any other manner constitute an integral part of a structure. Manufactured machinery and equipment which does not become permanently annexed to the realty remains tangible personal property after installation.

19.10(1) The following is a list of property which, under normal conditions, remains tangible personal property after installation. The list is nonexclusive and is offered for illustrative purposes only:

a. Furniture, radio and television sets and antennas, washers and dryers, portable lamps, home freezers, portable appliances and window air conditioning units.

b. Portable items such as casework, tables, counters, cabinets, lockers, athletic and gymnasium equipment and other related easily movable property attached to the structure.

c. Machinery, equipment, tools, appliances, and materials used exclusively as such by manufacturers, industrial processors and others performing a processing function with the items.

d. Office, bank and savings and loan association furniture and equipment, including office machines.

e. Radio, television and cable television station equipment, but not broadcasting towers.

f. Certain equipment used by restaurants and in institutional kitchens; for instance, dishwashers, stainless steel wall cabinets, stainless steel natural gas stoves, stainless steel natural gas convection ovens, and combination ovens and steamers with stands. This paragraph is not applicable to similar items used in residential kitchens. See Petition of Taylor Industries Inc. (Dkt No. 94-30-6-0367, 3-14-95).

19.10(2) The following is a list of property which, under normal conditions, becomes a part of realty. The list is nonexclusive and is offered for illustrative purposes only:

a. Boilers and furnaces for space heating.

b. Built-in household items such as kitchen cabinets, dishwashers, sinks (including faucets), fans, garbage disposals and incinerators.

c. Buildings, and structural and other improvements to buildings, including awnings, canopies, foundations for machinery, floors (including computer room floors), walls, general wiring and lighting facilities, roofs, stairways, stair lifts, sprinkler systems, storm doors and windows, door controls, air curtains, loading platforms, central air conditioning units, building elevators, sanitation and plumbing systems, decks, and heating, cooling and ventilation systems.

d. Fixed (year-round) wharves and docks.

e. Improvements to land including patios, retaining walls, roads, walks, bridges, fencing, railway switch tracks, ponds, dams, ditches, wells, underground irrigation systems, drainage, storm and sanitary sewers, and water supply lines for drinking water, sanitary purposes and fire protection. See rule 701—18.35(422,423) relating to drainage tile.

f. Mobile and modular homes installed on foundations.

g. Planted nursery stock.

h. Residential water heaters, water softeners, intercoms, garage door opening equipment, pneumatic tube systems and music and sound equipment (except portable equipment).

i. Safe deposit boxes, drive-up and walk-up windows, night depository equipment, remote TV auto teller systems, vault doors, and camera security equipment (except portable equipment).

j. Seating in auditoriums and theaters and theater stage lights (except portable seating and lighting).

k. Silos and grain storage bins.

l. Storage tanks constructed on the site.

m. Swimming pools (wholly or partially underground (except portable pools)).

n. Truck platform scale foundations.

o. Walk-in cold storage units becoming a component part of a building.

701—19.11(422,423) Tangible personal property which becomes structures. Items which are manufactured as tangible personal property can, by their nature, become structures. However, the determination is factual and must be made on an item-by-item basis. The following is a listing of criteria which courts have used in making such a determination:

1. The degree of architectural and engineering skills necessary to design and construct the structure.
2. The overall scope of the business and the contractual obligations of the person designing and building the structure.
3. The amount and variety of materials needed to complete the structure, including the identity of materials prior to assembly and the complexity of assembly.
4. The size and weight of the structure.
5. The permanency or degree of annexation of the structure to other real property which would affect its mobility.
6. The cost of building, moving or dismantling the structure.

EXAMPLE: A farm silo, which is a prefabricated glass-lined structure, is intended to be permanently installed. The prefabricated glass-lined structure is 70 feet high, 20 feet around, weighs 30 tons, and it is affixed to a concrete foundation weighing 60 tons which is set in the ground specifically for the purpose of supporting the silo. The assembly kit includes 105 steel sheets and 7000 bolts. The silo can be removed without material injury to the realty or to the unit itself at a cost of $7,000. In view of its massive size, the firm and permanent manner in which it is erected on a most substantial foundation, its purpose and function, the expense and size of the task and the difficulty of removing it, it is considered a structure and not machinery or equipment. *Wisconsin Department of Revenue v. A. O. Smith Harvestore,* 240 N.W.2d 357 (Wisc. 1976).

The above criteria are intended only to be summation of factors which the department will consider in determining whether or not a project involves construction. The following cases are used as reference material:

Wisconsin Department of Revenue v. A. O. Smith Harvestore Products, Inc., 240 N.W.2d 357 (Wisc. 1976); *Prairie Tank or Construction Co. v. Department of Revenue,* 364 N.W.2d 963 (Ill. 1977); *Levine v. State Board of Equalization,* 299 P. 2d 738 (Calif. 1956); *State of Alabama v. Air Conditioning Engineers, Inc.,* 174 So 2d 315 (Ala. 1965); *A. S. Schulman Electric Company v. State Board of Equalization*, 122 Cal. Rptr 278 (Calif. 1975); *Western Pipeline Constructors, Inc. v. J.M. Dickinson*, 310 S.W.2d 455 (Tenn.); and City of Pella Municipal Light Plant, Order of the Director of Revenue, June 16, 1975.

701—19.12(422,423) Construction contracts with tax exempt entities. This rule applies to exempt sales of building materials, supplies, and equipment to certain persons performing construction contracts for sponsors which are designated exempt entities and the continuing right of designated exempt entities and other persons to seek refund of taxes paid by persons performing construction contracts.

19.12(1) *Definitions.*

"Construction contract" has the same meaning as the definition of that phrase set out in rule 701—19.7(422,423).

"Designated exempt entity" includes only the following: a private nonprofit educational institution in this state, 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.

"Exemption certificate" means a certificate which is complete and correct according to the requirements of this rule. A certificate which is complete and correct according to the requirements of this rule must contain, at a minimum, the following information: the name and address of the designated exempt entity; the federal identification number of the exempt entity; the name of the construction project or the project number for which exemption is requested; and a general description of that project. The certificate shall also contain the contractor's, subcontractor's, builder's, or manufacturer's name and address. The certificate must be completed, signed, dated, and issued by an authorized official of the designated exempt entity. The certificate is valid only for the stated construction project.

"Purchasing agent authorization letter" means a letter from a designated exempt entity to a contractor, subcontractor, builder or manufacturer authorizing the contractor, subcontractor, builder, or manufacturer to purchase tangible personal property consisting of building materials, supplies, or equipment free from tax for a construction project of which the designated exempt entity is the sponsor. The letter shall set out the contract date or the contract letting date and give a general description of the construction contract to which it applies. The letter shall state that it is the responsibility of the contractor, subcontractor, builder, or manufacturer to keep records identifying the property purchased exempt from tax and verifying that the property purchased was used in the contract with the exempt entity. The letter shall also state that property purchased tax-free and not used in the contract with the exempt entity is subject to tax which must be paid directly to the Iowa department of revenue.

19.12(2) *Exempt purchases, withdrawals from inventory, and manufacturers' fabrication costs.* This subrule and the exemptions it describes are applicable to construction contracts entered into on or after January 1, 2003.

a. Contractors, subcontractors, and builders who purchase building materials, supplies, or equipment intending to use that property in the performance of a construction contract with a designated exempt entity shall purchase the property from a retailer exempt from tax if the property is subsequently used in the performance of that contract and the contractor, subcontractor, or builder presents a purchasing agent authorization letter and an exemption certificate issued by the designated exempt entity to the retailer.

b. The withdrawal of building materials, supplies, or equipment from inventory by a contractor, subcontractor, or builder who is also a retailer is exempt from tax if the materials are withdrawn for use in construction performed for a designated exempt entity and an exemption certificate is received from the entity.

c. The "fabricated cost" (see rule 701—16.3(422,423)) of building materials, supplies, or equipment purchased and consumed by the manufacturer of such property in the performance of a construction contract for a designated exempt entity is exempt from tax if a purchasing agent authorization letter and an exemption certificate are received from the exempt entity and presented to a retailer.

d. Sales, withdrawals, or a manufacturer's consumption of building materials, supplies, or equipment used in the performance of a construction contract for purposes other than incorporation into real property with subsequent loss of identity as tangible personal property are not eligible for this subrule's exemption.

19.12(3) *Notification to the department.* A designated exempt entity shall notify the department when any purchasing agent authorization letter and exemption certificate have been issued for a construction contract project. The notification shall, so far as practicable, describe the project and identify the contractors, subcontractors, builders, and manufacturers which will be using the letters and certificates.

19.12(4) *Exemption certificates taken in good faith.* A retailer who accepts an exemption certificate described in this rule has all the rights and obligations of a retailer described in 701—subrules 15.3(1) and 15.3(2).

19.12(5) *Contracts with designated exempt entities, businesses in economic development areas, and rural water districts organized under Iowa Code chapter 504A—eligibility for refund in the absence of eligibility for exemption.* Contractors, subcontractors, and builders who enter into written construction contracts with designated exempt entities, businesses in economic development areas, or rural water districts organized under Iowa Code chapter 504A can still be required to remit sales tax on building materials, supplies, and equipment to their suppliers or to pay a corresponding use tax. Reasons for this will vary; these reasons are not intended to be all-inclusive. In the case of a contractor, subcontractor, or builder entering into a written construction contract with a designated exempt entity, the requirement to remit or pay tax can result from failure to secure an exemption certificate or purchasing agent authorization letter. In the case of a contractor, subcontractor, or builder entering into a written construction contract with businesses in economic development areas or rural water districts organized under Iowa Code chapter 504A, the requirement to remit or pay tax can result from the fact that businesses in economic development areas or rural water districts organized under Iowa Code chapter 504A are not designated exempt entities and thus not eligible to claim their exemption.

Even if no right to claim the designated exempt entity exemption exists, under the provisions of Iowa Code section 422.45(7) or 15.331A(1), a contractor is still required to provide a designated exempt entity which has not properly claimed its exemption, business or supporting business in an economic development area, or a rural water district organized under Iowa Code chapter 504A with a statement before final settlement of the contract, showing the amount of sales of goods, wares or merchandise or services rendered, furnished or performed and used in the performance of the contract, and the amount of sales and use taxes paid on these items. The department provides Form 35-002 for this purpose. If final settlement occurred before May 20, 1999, the governmental unit, private nonprofit educational institution, nonprofit private museum, business or supporting business, or rural water district organized under Iowa Code chapter 504A has six months after the final settlement to file a claim for refund on Form 35-003 for sales and use taxes paid by the contractor. If final settlement occurs on or after May 20, 1999, a period of one year after the date of final settlement is allowed for filing a claim for refund. The failure of a contractor to remit taxes on materials, supplies, and equipment used in the performance of a construction contract does not relieve the contractor of liability even though the refund was not or cannot be claimed. See *Dealers Warehouse Co. Inc. v. Department of Revenue,* Jasper County District Court, 90-3910936, December 6, 1978.

If a construction contract is a contract which includes machinery or equipment with installation (see rule 701—19.8(422,423)) or a mixed contract (see rule 701—19.9(422,423)), the machinery and equipment must be purchased tax-free because the machinery and equipment will be resold to the contract sponsor. There will be no sales tax charged on resales of machinery and equipment to sponsors which are designated exempt entities, businesses in economic development areas, or rural water districts organized under Iowa Code chapter 504A since these sales are exempt under Iowa Code sections 422.45(5) and 422.45(8). See also 261—subrule 58.4(7) for an explanation of the exemption for sales of machinery and equipment to businesses or supporting businesses in an economic development area.

This rule is intended to implement Iowa Code sections 357A.15, 422.42, 422.45 and 422.47.

701—19.13(422,423) Tax on enumerated services. The tax on the services enumerated in Iowa Code section 422.43 is basically a tax on labor. When such services are performed on or connected with new construction, reconstruction, alteration, expansion or remodeling of real property or structures, they are exempt from tax. The repair of machinery on the job site is not exempt from tax under this rule.

The distinction between a repair (see subrule 19.13(1)) and new construction, reconstruction, alteration, expansion and remodeling activities (see subrule 19.13(2)) can, oftentimes, be difficult to grasp. Therefore, the intent of the parties and the scope of the project may become the factors which determine whether certain enumerated services are taxable. An area of particular difficulty is the distinction between repair and remodeling. "Remodeling" a building or other structure means much more than making repairs or minor changes to it. Remodeling is a reforming or reshaping of a structure or some substantial portion of it to the extent that the remodeled structure or portion of the structure is in large part the equivalent of a new structure or part thereof. See *Board of Commissioners of Guadalupe*

County v. State, 43 N.M. 409, 94 P.2d 515 (1939) and *City of Mayville v. Rosing,* 19 N.D. 98, 123 N.W. 393 (1909).

19.13(1) Repair is synonymous with mend, restore, maintain, replace and service. A repair contemplates an existing structure or thing which has become imperfect and constitutes the restoration to the original existing structure which has been lost or destroyed. A repair is not a capital improvement; that is, it does not materially add to the value or substantially prolong the useful life of the property.

Iowa Code section 422.42(13) defines a person engaged in the business of performing taxable services as a retailer. Since retailers may purchase building materials, supplies and equipment for resale, persons making taxable repairs (repairpersons and servicepersons) are not considered to be contractors and are not subject to the provisions of Iowa Code section 422.42(15). In addition, such persons are not considered to be owners, subcontractors or builders. So repairpersons and servicepersons will normally purchase building materials and supplies free of tax for subsequent resale to their customers; contractor-retailers will also do this. However, contractors, subcontractors or builders who may make repairs are subject to Iowa Code section 422.42(15) and must pay tax at the time building materials, supplies and equipment are purchased from their vendors even though they hold a valid sales tax permit. See rules 19.2(422,423) and 19.3(422,423). In determining who is a contractor and who is a retailer of repair services, the department looks to the "total business" of the entity in question and not to any one portion of it. Thus, the fact that a business whose overall activity is contracting has a division engaged in taxable repair services does not transform that business into a retailer providing services rather than a contractor. When contractors do repair work, they should separately itemize labor and materials charges and collect sales tax on labor charges only. A contractor's markup on a materials charge is not part of any taxable labor charge unless that markup is a disguised labor charge done with the intent to evade collecting Iowa sales tax.

When other persons making repairs sell tangible personal property at retail in connection with any taxable service enumerated in Iowa Code section 422.43, then those persons shall collect and remit tax on all gross receipts. The person making repairs shall purchase tangible personal property for resale when the property is used in the repair job and is resold to a customer. See rule 701—18.31(422,423) for an explanation of when persons performing services sell the property they use in performing those services to their customers. Nonexclusive examples of repair situations follow:

1. Repair of broken or defective glass.
2. Replacement of broken, defective or rotten windows.
3. Replacing individual or damaged roof shingles.
4. Replacing or repairing a portion of worn-out or broken kitchen cabinets.
5. Replacement of garage doors or garage door openers.
6. Replacing or repairing a portion of a broken or worn tub, shower, or faucets.
7. Replacing or repairing a portion of a broken water heater, furnace or central air conditioning compressor.
8. Restoration of original wiring in a house or building.

19.13(2) The following are examples of new construction, reconstruction, alteration, expansion and remodeling activities:

a. The building of a garage or adding a garage to an existing building would be considered new construction.

b. Adding a redwood deck to an existing structure would be considered new construction.

c. Replacing a complete roof on an existing structure would be considered new construction or alteration.

d. Adding a new room to an existing building would be considered new construction.

e. Adding a new room by building interior walls would be considered alteration.

f. Replacing kitchen cabinets with some modification would be considered an improvement.

g. Paneling existing walls would be considered an improvement.

h. Laying a new floor over an existing floor would be considered an improvement.

i. Rebuilding a structure damaged by flood, fire or other uncontrollable disaster or casualty would be considered reconstruction.

j. Building a new wing to an existing building would be considered an expansion.

k. Rearranging the interior structure of a building would be considered remodeling.

l. Installing manufactured housing or a modular or mobile home on a foundation. However, see rule 701—33.10(423) for a description of the special treatment of taxable installation charges when the taxable sale of manufactured housing as real estate occurs.

m. Replacing an entire water heater, water softener, furnace or central air conditioning unit.

n. Sign installation and well-drilling services are generally performed in connection with new construction.

In all the examples, the contractor is responsible for paying tax to any supplier on materials. However, there would be no tax on any enumerated services.

19.13(3) The term "on or connected with" is broad and should be used to convey generally accepted meaning. Therefore, in a specific situation, the facts relating thereto are controlling in determining whether the exemption is applicable. "On or connected with" does not connote that those things connected have to be primary or subsidiary to the construction, reconstruction, alteration, expansion or remodeling of the real property. An incidental relationship can qualify the activity for exemption if the relationship forms an intimate connection with the construction activity. For example, the service of excavating and grading relating to the clearing of land to begin construction of a building would qualify for the exemption; however, excavating and grading land without motive toward construction would not qualify for exemption even though at some later date plans to construct a building were created and a structure was actually erected.

The presence of a time relationship can also be a factor in determining the applicability of exemption. For example, tax would not apply to separate labor charges relating to the installation of production machinery and equipment in a building while remodeling of the real property was in progress. (Tax could apply to the sales price of the production machinery and equipment; see rule 701—18.45(422,423).) However, if a year after all construction activity has ended, the owner decides to install a piece of production machinery in the building, any taxable enumerated services relating thereto would be subject to tax. Further, if following construction, the land is graded for the purpose of seeding a new lawn, the exemption would be applicable. However, if the lawn does not grow and the land is regraded the following year, the exemption would not be applicable. See also 701—subrule 18.45(7) for the exemption, effective July 1, 1985, regarding the installation of new industrial machinery and equipment.

Therefore, the motive behind the activity and the course of events that could reasonably be expected to occur would be a further consideration in determining if the exemption is applicable.

A physical relationship is also a factor that should be evaluated. If a building is constructed to house machinery, any enumerated services relating to the installation of that machinery would be exempt from tax. For example, piping joining two pieces of equipment housed in separate buildings would qualify for exemption if the equipment in either building was installed while such new construction, reconstruction, alteration, expansion or remodeling to the structure was also taking place to house the equipment.

On the other hand, an incidental relationship, a time relationship and close physical proximity may not be enough to support the conclusion that a taxable service is performed in connection with new construction or reconstruction, for example. For instance, a homeowner hires a general contractor to add a new room to an existing home (which is new construction; see 19.13(2)*"d"* above). The existing home is in need of a number of the repairs described in 19.13(1); for example, it is in need of rewiring and replacement of a broken window. The general contractor rewires the home and repairs the window in addition to building the new room. The taxable services which the general contractor performs while rewiring the home and repairing the window are not performed in connection with the construction of the new room simply because those services happen to be performed at the same time and on the same home as the new construction. If the addition of the new room were the cause of the need for the taxable service (e.g., the window was broken during construction of the new room) and not just a convenient occasion for performance of the service, that performance would be exempt from tax.

The department would like to emphasize that facts and motives are important in the determination of the taxability of services relating to construction activities. However, it should also be noted that taxes

on enumerated services are applicable to repair work that is not a construction activity. Please refer to subrule 19.13(1) relating to persons who make repairs for more information.

19.13(4) Excavating includes the digging, hollowing out, scooping out, or making a hole in the earth. It also includes removal of materials or substance found beneath the surface. Grading includes a change in the earth's structure by scraping and filling to a common level or a fixed line known as a grade. The enumerated services excavating and grading are not subject to tax if performed on or connected with new construction. Removal of overburden which is directly related to road building, building of dikes, building of farm ponds, and creating drainage ditches would not be taxable as such activities would be considered on or connected with the creation of a structure. See *Maasdam v. Kirkpatrick,* 214 Iowa 1388 (1932). However the mere removal of overburden, without more, would be taxable as the enumerated service of excavating or grading under Iowa Code section 422.43.

19.13(5) Services associated with new construction or reconstruction, for example, which are not taxable include, but are not limited to, brick laying, concrete finishing, tiling, siding installation, laying of linoleum and other flooring and carpet installation. No tax can be collected on the performance of these services even when they are furnished in connection with the performance of repairs.

This rule is intended to implement Acts of the Sixty-third General Assembly, First Session, 1969, chapter 248, section 9 (this enactment is not part of the Iowa Code).

701—19.14(422,423) Transportation cost. Transportation charges and delivery charges are not subject to the Iowa sales and use tax when they are separately contracted or, if no written contract exists, are separately itemized on the billing from the seller to the purchaser. See rule 701—15.13(422,423).

701—19.15(422,423) Start-up charges. Start-up charges are not subject to the Iowa sales and use tax when they are separately contracted or, if no written contract exists, are separately itemized on the billing from the seller to the purchaser.

701—19.16(422,423) Liability of subcontractors. A subcontractor who is providing materials and labor on the actual construction of the building or structure has the same status and tax responsibilities as a general contractor under the Iowa statutes. However, where an individual or firm is hired to provide machinery and equipment to a general contractor or another subcontractor, the individual or firm is considered a material supplier rather than a subcontractor. This is true, even though the machinery and equipment are supplied with installation. Items of machinery and equipment sold by material suppliers to contractors shall be sold for resale and the contractor must provide the material supplier with a valid resale certificate.

701—19.17(422,423) Liability of sponsors. The sponsor cannot be held responsible for a tax liability incurred on building materials, supplies and equipment by a general contractor or subcontractor in the completion of a construction contract. Likewise, a general contractor cannot be held responsible for the tax liability incurred on building materials, supplies and equipment by a subcontractor in the completion of a construction contract. The tax responsibility regarding machinery and equipment contracts depends on where the sale was consummated. If the sale was consummated in Iowa, the seller is responsible for the collection and remittance of tax unless a valid exemption certificate is given by the purchaser. If the sale was consummated outside Iowa and the seller does not remit use tax to the department, then a use tax would be due from the Iowa user.

701—19.18(422,423) Withholding. A sponsor of a contract with a nonregistered out-of-state (nonresident) contractor may be asked to withhold the final payment of the contract as a guarantee that sales and use taxes will be paid. The withholding requirement may also apply to registered out-of-state contractors at the discretion of the department. The department will issue a notice to the sponsor to support the withholding of funds. In order to seek a release of the notice, the out-of-state contractor is required to file a report with the department consisting of the following departmental forms:

1. Form 35-012 which is a listing of subcontractors to whom the out-of-state contractor has awarded a construction contract. This statement should be submitted on each project as it becomes available.

2. Form 35-013 which is a list of material suppliers both in state and out of state from whom tangible personal property has been purchased for use in completing each project or contract.

3. Form 35-001 which is a summary of the provisions of the actual contract.

All letters of release furnished by the department are subject to audit and therefore, are not unconditional release from any Iowa sales or use tax liability. All letters of release will be issued within 60 days upon receipt of the proper information unless an error or discrepancy is noted.

701—19.19(422,423) Resale certificates. Whenever machinery and equipment which will remain tangible personal property after installation is purchased for a machinery and equipment contract, by a contractor from a supplier or a material supplier, it should be purchased for resale. See rule 19.8(422,423). Resale purchases are most commonly related to machinery and equipment sales contracts with installation and mixed construction contracts. Contractor-retailers and persons making repairs may also purchase materials for resale as long as they collect tax on their retail sales and pay the tax themselves on items withdrawn from inventory for use in the performance of a construction contract. See rule 19.4 (422, 423) and subrule 19.13(1). Resale certificates can be obtained by contacting the Iowa department of revenue. See rule 701—15.3(422,423) for detailed information on resale certificates.

701—19.20(423) Reporting for use tax. An Iowa contractor can report use tax either on a consumers use tax return or as consumed goods on a sales tax return. Tax is due in the quarter the materials are delivered into Iowa. Nonresident contractors should report use tax on a consumers use tax return. Consumer use tax returns for nonresident contractors must be obtained directly from the department of revenue unless the contractor is registered with the department.

This chapter is intended to implement Iowa Code sections 422.42(3), 422.42(12), 422.42(13), 422.43, 422.45(5), 422.45(7), 422.45(8), 422.47, 422.48, and 423.2.

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CHAPTER 20
FOODS FOR HUMAN CONSUMPTION, PRESCRIPTION DRUGS, INSULIN, HYPODERMIC SYRINGES, DIABETIC TESTING MATERIALS, PROSTHETIC, ORTHOTIC OR ORTHOPEDIC DEVICES

[Sales Tax Exemption]
[Prior to 12/17/86, Revenue Department[730]]

701—20.1(422,423) Foods for human consumption. Foods for human consumption which may be purchased with food coupons shall be exempt from tax regardless of whether the retailer from whom the foods are purchased is participating in the food coupon program. On or after July 1, 1985, candy, candy-coated items, candy products and certain beverages, which are described in subrule 20.1(3) and which may be purchased with food coupons, are taxable unless purchased on or after October 1, 1987, with food coupons issued under the federal Food Stamp Act of 1977, 7 U.S.C. §2011 et seq.

20.1(1) *Foods eligible for food coupons.* These foods shall include all foods which may be purchased with food coupons issued by the United States Department of Agriculture under the regulations in effect on July 1, 1974. Most products can easily be classified either as food or food products or as nonfood items. There are, however, certain items that are not readily distinguishable as food or nonfood and may present problems in judgment. The following guidelines apply to some of the more unique categories of eligible foods about which questions may arise and to those special categories of items which are eligible for purchase with food stamps. The list is not to be considered all-inclusive:

a. *Garden seeds and plants.* Seeds and plants for use in gardens to produce food for consumption may be purchased with food coupons. Seeds and plants eligible for purchase with food coupons include vegetable seeds and food-producing plants such as tomato and green pepper plants and fruit trees. In addition, food-producing roots, bushes, and bulbs (e.g., asparagus roots and onion sets) are eligible food items. Seeds and plants used to produce spices for use in cooking foods may also be purchased with food coupons.

b. *Distilled water and ice.* These items, although having some nonfood usages, are largely used as food or in food for human consumption. Unless these items are specifically labeled for nonfood use or the recipient indicates they will be used for other than human consumption, they are eligible and may be purchased with food coupons. On or after July 1, 1985, distilled water and certain other beverages, which are described in paragraph 20.1(3)*"b"* and which may be purchased with food coupons, are taxable unless purchased on or after October 1, 1987, with food coupons issued under the federal Food Stamp Act of 1977, 7 U.S.C. §2011 et seq.

c. *Specialty foods.* This category of eligible foods includes special dietary foods (e.g., diabetic and dietetic), enriched or fortified foods, infant formulas, and certain foods commonly referred to as health food items. These items are food products which are substituted for more commonly used food items in the diet, and thus they are eligible for purchase with food coupons. Examples of items in this category of eligible foods are Metrecal, Enfamil, Sustegen, wheat germ, brewer's yeast, sunflower seeds which are packaged for human consumption, and rose hips powder which is used for preparing tea. It is not possible to formulate a comprehensive list of eligible specialty foods. The guideline to be used to determine the eligibility of specific items is the ordinary use of a product.

NOTE: If the product is primarily used as a food or in preparing food, then it is an eligible item; if it is primarily used for medicinal purposes as either a therapeutic agent or a deficiency corrector and only occasionally used as a food, the product is not an eligible item. On or after July 1, 1985, candy, candy-coated items, candy products, and certain beverages, which are described in subrule 20.1(3) and which may be purchased with food coupons, are taxable unless purchased on or after October 1, 1987, with food coupons issued under the federal Food Stamp Act of 1977, 7 U.S.C. §2011 et seq.

d. *Snack foods.* These products are food items and, therefore, are eligible. Typical examples of snack foods are candy, soft drinks, potato chips, and chewing gum. On or after July 1, 1985, candy, candy-coated items, candy products, and certain beverages, which are described in subrule 20.1(3) and

which may be purchased with food coupons, are taxable unless purchased on or after October 1, 1987, with food coupons issued under the federal Food Stamp Act of 1977, 7 U.S.C. §2011 et seq.

e. Others. There are certain eligible food items which are normally consumed only after being incorporated into foods and other ingredients. Since these items then become part of a food for human consumption, they are eligible items. An example is pectin. Pectin is the generic term for products marketed under various brand names and commonly used as a base in making jams and jellies. When pectin is incorporated into jams or jellies, it becomes part of a food for human consumption and, therefore, is an eligible food item. Other examples are lard and vegetable oils.

The following general classifications of food products are also exempt from tax unless taxable as prepared food—see rule 20.5(422,423):

Bread and flour products

Cereal and cereal products

Cocoa and cocoa products, unless taxable in the form of candy as in paragraph 20.1(3)*"a"*

Coffee and coffee substitutes

Dietary substitutes (see paragraphs 20.1(1)*"c"* above and 20.1(2)*"a"* below)

Eggs and egg products

Fish and fish products

Frozen foods

Fruits and fruit products including fruit juices, unless taxable as a beverage as in paragraph 20.1(3)*"b"*

Margarine, butter, and shortening

Meat and meat products

Milk and milk products including packaged ice cream products

Spices, condiments, extracts, and artificial food coloring

Sugar and sugar products and substitutes, unless taxable in the form of candy as in paragraph 20.1(3)*"a"*

Tea

Vegetables and vegetable products

Products which are made with ingredients identical to those which are eligible for purchase with food coupons, unless taxable as candy, candy-coated items, candy products, or beverages described in subrule 20.1(3) or prepared food as in subrule 20.5(2).

20.1(2) *Products not eligible for purchase by food coupons.* Various products may not be purchased with food coupons issued by the United States Department of Agriculture and, therefore, are not exempt from tax. They include, but are not limited to, the following:

a. Vitamins and minerals. Vitamins and minerals, which are marketed in various forms such as tablets, capsules, powders, and liquids, serve as supplements to food or food products rather than as foods, and, therefore, are not eligible for purchase with food coupons. Vitamins and minerals are also present in natural foodstuffs, and certain vitamins and minerals have been determined to be essential to nutrition. However, because these essential vitamins and minerals occur naturally in foods, a good diet will include a variety of foods that together will supply all nutrients needed. Therefore, a nutritionally adequate diet as provided for in the Food Stamp Act may be obtained without the use of specially formulated vitamin and mineral preparations and other specially formulated therapeutic products. Since these products serve as deficiency correctors or therapeutic agents to supplement diets deficient in essential nutrition rather than as foods, they are not eligible for purchase with food coupons. In addition to vitamin and mineral tablets or capsules, this category includes products such as cod liver oil, which is used primarily as a source of vitamins A and D. It is not possible to provide a comprehensive list of other such items which are primarily used for medicinal purposes or as health aids and which may be stocked by authorized firms.

b. Health aids. Patent medicines and other products used primarily as health aids or therapeutic agents are not foods as defined by the Food Stamp Act and, therefore, may not be purchased with food coupons. Such products include aspirin, cough drops or syrups and other cold remedies, antacids, and all patent medicines or other products used as health aids. In addition to these commonly used health

aids, any product used primarily for medicinal purposes is ineligible. An example of such products is slippery elm powder, a demulcent which is used to soothe sore throats.

c. Items not exempt. The following general classifications of products are subject to tax:

Alcoholic beverages

Dietary supplements (see paragraphs 20.1(1)*"c"* and 20.1(2)*"a"* above)

Pet foods and supplies

Household supplies

Paper products

Soaps and detergents

Tobacco products

Cosmetics

Toiletry articles

Tonics

Lunch counter or prepared foods for consumption on the premises of the retailer.

Additionally, on or after July 1, 1985, the following classifications of products are subject to tax even when eligible for purchase with food coupons:

Foods prepared by the retailer which may be immediately consumed off of the premises of the retailer and that are sold hot or cold.

Candy, candy-coated items, and candy products as described in 20.1(3)*"a."*

Certain beverages as described in 20.1(3)*"b."*

20.1(3) *Candy, candy-coated items, candy products, and certain beverages.* Even when eligible for purchase with food coupons, candy, candy-coated items, candy products, and certain beverages are taxable on or after July 1, 1985, unless purchased on or after October 1, 1987, with food coupons issued under the federal Food Stamp Act of 1977, 7 U.S.C. §2011 et seq.

a. Candy, candy-coated items, and candy products. Candy, candy-coated items and candy products are taxable on or after July 1, 1985, unless purchased on or after October 1, 1987, with food coupons issued under the federal Food Stamp Act of 1977, 7 U.S.C. §2011 et seq. Candy, candy-coated items, and candy products include those products normally considered to be "candy."

(1) *Candy.* Candy is a prepared food made of a sugar paste or syrup or other natural or artificial sweeteners often enriched and varied with coloring and flavoring and formed into various shapes.

(2) *Candy-coated items.* Candy-coated items are products like fruit or nuts which are dipped or otherwise substantially covered with candy and which would normally be considered candy.

(3) *Candy products.* Candy products include mixtures containing both candy and noncandy items. The inclusion of candy merely as an incidental ingredient in a product does not make the item a candy product.

(4) *Taxable candy, candy-coated items, and candy products.* Candy, candy-coated items, and candy products include: preparation of fruits, nuts or other ingredients in combination with sugar, honey or other natural or artificial sweeteners in the form of bars, drops or pieces; hard or soft candies including jelly beans, taffy, licorice, and mints; dried fruit leathers or other similar products prepared with natural or artificial sweeteners; cotton candy; candy breath mints; and mixes of candy pieces, dried fruits, nuts, and similar items.

(5) *Nontaxable items and products.* Candy, candy-coated items, or candy products do not include: jams, jellies, preserves, or syrups; frostings; dried fruits; marshmallows; unsweetened or sweetened baking chocolate in bars, pieces, or chips; breakfast cereals; prepared fruit in a sugar or similar base; ice cream or other frozen desserts covered with chocolate or similar coverings; caramel or other candy-coated apples or other fruit; candy-coated popcorn; cakes, cookies, and similar products covered with chocolate or other similar coating; candy primarily intended for decorating baked goods; and granola bars. However, these and similar items are taxable if sold as prepared food under subrule 20.5(2).

b. Beverages. In addition to alcoholic beverages, other beverages are taxable on or after July 1, 1985. Beverages are not taxed if purchased on or after October 1, 1987, with coupons issued under the federal Food Stamp Act of 1977, 7 U.S.C. §2011 et seq.

(1) Taxable beverages. Taxable beverages are: effervescent and noneffervescent water sold in containers; soda and mineral bottled water; soft drinks carbonated and noncarbonated including but not limited to colas, ginger ale, near beer, and root beer; lemonade, orangeade, and all other drinks or punches with natural fruit or vegetable juice less than 15 percent by volume.

Beverage mixes and ingredients intended to be made into taxable beverages are taxable. See 20.1(3)*"b"*(2) for exceptions.

Beverage mixes or ingredients may be liquid or frozen, concentrated or nonconcentrated, dehydrated, powdered, granulated, sweetened or unsweetened, seasoned or unseasoned. Concentrates intended to be made into beverages which contain natural fruit or vegetable juice of less than 15 percent by volume are taxable.

(2) Nontaxable beverages are: tea, coffee, beverages that contain primary dairy products, or dairy ingredient bases, and beverages that contain natural fruit or vegetable juice of 15 percent or more by volume. However, these and similar beverages are taxable if sold as prepared food and drink under subrule 20.5(2).

Nondairy coffee "creamers" in liquid, frozen or powdered form are not beverages.

Sugar or other artificial or natural sweeteners sold separately are not taxable as beverage ingredients.

Specialty foods that are liquids or that are to be added to a liquid and that are intended to be a substitute in the diet for more commonly used food items are not beverages and are not taxable as beverages. These foods include infant formula.

This rule is intended to implement Iowa Code subsection 422.45(12).

701—20.2(422,423) Food coupon rules. Food coupon rules used in determining whether certain foods are eligible for purchase by food coupons and therefore exempt from sales tax shall be those United States Department of Agriculture regulations in effect on July 1, 1974, unless the purchase is actually made with food coupons on or after October 1, 1987, in which case the exemption applies to the purchase of all food eligible under the federal Food Stamp Act of 1977, 7 U.S.C. §2011 et seq.

20.2(1) On or after July 1, 1985, candy, candy-coated items, candy products, and certain beverages, which are described in 20.1(3) and which may be purchased with food coupons, are taxable unless purchased on or after October 1, 1987, with food coupons issued under the federal Food Stamp Act of 1977, 7 U.S.C. §2011 et seq.

20.2(2) On or after October 1, 1987, when a purchase of items eligible for purchase with food coupons is paid with food coupons and cash, the retailer may elect to collect and remit tax in one of the following manners:

a. The entire sale of eligible food items is exempt from tax when a purchase of items eligible for purchase with food coupons is paid with food coupons and cash, or

b. The part of the payment made with food coupons is to apply first to the taxable items eligible for purchase with food coupons. The election once made by the retailer applies to all sales until the retailer notifies the department in writing that the alternate manner is to be used.

701—20.3(422,423) Nonparticipating retailer in the food coupon program. A nonparticipating retailer in the food coupon program is a retailer who may sell foods that are eligible for purchase with food coupons but by the retailer's own choice or at the discretion of the United States Department of Agriculture is not participating in the food coupon program.

701—20.4(422,423) Determination of eligible foods. Pursuant to 20.1(422,423), 20.2(422,423) and 20.3(422,423), in order to be eligible for the sales tax exemption, foods must be the same foods eligible for purchase by food coupons and shall not include foods that in their original state may have been purchased by food coupons but due to changes to the foods such as additional ingredients, preparation, or any other change of state, they are no longer foods eligible for purchase by food coupons.

701—20.5(422,423) Meals and prepared food. Meals and prepared food are subject to tax using different criteria before July 1, 1985, and on or after July 1, 1985.

20.5(1) *Before July 1, 1985.* Meals prepared for immediate consumption on or off the premises of the retailer are not eligible for the sales tax exemption. A meal shall consist of a diversified selection of foods, which would not be able to be consumed without at least some articles of tableware being present and which could not be conveniently consumed while one is standing or walking about. A meal would usually consist of a larger quantity of food than that which ordinarily comprises a single sandwich. *Treasure Island Catering Company, Inc. v. State Board of Equalization,* 1941, 19 Cal.2d 181.

a. Retailers who are considered serving meals shall include those who serve meals off the premises of the retailers such as caterers.

b. Meals that may be eligible for purchase with food coupons shall not be exempt from sales tax. This shall include carryout plate lunches that are served with articles of tableware. Tableware shall include dishes, glasses, and silverware and includes paper or plastic tableware.

20.5(2) *On or after July 1, 1985.* Sales of prepared food are taxable in three situations: All food, food products, and drinks prepared for consumption on the premises of the retailer; all foods and drinks sold by caterers; all food, food products, and drinks prepared by the retailer for immediate consumption off the premises of the retailer. Sales of prepared foods may be taxed under any of the three situations. Examples given in this subrule are meant to illustrate the application of the subrules to the facts described.

a. On-premises consumption. Sales of food products and food and drinks prepared by the retailer or others on or off the premises of the retailer for consumption on the premises of the retailer are taxable. If the food is sold for consumption on the premises of the retailer, the food is presumed to have been consumed on the premises of the retailer.

"Premises of the retailer" means the total space and facilities under control of the retailer, including buildings, grounds, and parking lots that are made available or that are available for use by the retailer, for the purpose of sale of prepared food and drink or for the purpose of consumption of prepared food and drink sold by the retailer.

Availability of self-service heating or other preparation facilities or eating facilities such as tables and chairs and knives, forks, and spoons, indicates that food, food products, and drinks are sold for consumption on the premises of the retailer and are subject to tax unless sales of prepared food are clearly identifiable as being for consumption off of the premises of the retailer in which case the sale may be taxable under 20.5(2)*"c."*

Types of retailers that are generally considered to be offering food for consumption on the premises include restaurants, coffee shops, cafeterias, snack shops, and concession stands including those at recreation and entertainment facilities. Other retailers that often offer food for on-premises consumption include vending machines and mobile vendors.

Separate eating facilities need not be provided for the sale of prepared food and drink to be for consumption on the premises of the retailer if the retailer operates vending machines, mobile vendors, snack shops, or concessions and on the same premises operates facilities for such activities as recreation, entertainment, education, office work, or manufacturing.

The following examples are intended to show some of the situations in which sales are taxable as food and drink prepared for consumption on the premises of the retailer.

EXAMPLE A. A movie theater owner operates a movie theater and a concession stand in the lobby of the theater. There is not a separate area set aside for eating facilities. Sales of prepared food and drink through the concession stand are taxable as sales for consumption on the premises of the retailer.

EXAMPLE B. As a convenience to employees, a manufacturer owns and operates several food and drink vending machines located on the premises of the plant. No separate seating or other facilities for eating are provided. Sales of prepared food and drink through the vending machines are taxable as sales for consumption on the premises of the retailer.

EXAMPLE C. Mobile vendor units located throughout an office are operated by the owner of the business and are stocked with snack food priced to cover the cost of the items to the employer. No separate eating facilities are provided. Sales of prepared food through the mobile vendors are taxable as sales for consumption on the premises of the retailer.

EXAMPLE D. A bakery with seating provided for eating offers baked goods prepared by the bakery for consumption on the premises and for take-out. Baked goods are neither hot nor cold. Baked goods

as well as other prepared food and drink sold for consumption on the premises are taxable. However, the baked goods sold by this bakery on a take-out basis are not taxable because they are sold neither hot nor cold.

EXAMPLE E. A separate area in an office building is set aside for vending machines with seating facilities for eating provided. The seating area and the vending machines are maintained and operated under contract by a vending company. In this case, sales of prepared food and drink through the vending machines are taxable as sales for consumption on the premises of the retailer.

b. Catered food. All sales of food, food products, and drinks on a catered basis are subject to tax.

c. Off-premises consumption. When a sale of prepared food is clearly identifiable as being for consumption off of the premises, the sale is taxable if the food is:

(1) Hot or cold,

(2) Prepared by the retailer, and

(3) For immediate consumption.

"Hot or cold" means that the food is intentionally sold in a heated or cooled state. Food that is not heated or cooled is taxable if sold in combination with other heated or cooled food on a nonitemized basis. Availability of self-service heating facilities indicates intent to sell food in a heated state whether or not the food is actually heated at the time of sale.

Preparation by the retailer for immediate consumption includes, but is not limited to: cooking, mixing, sandwich making, blending, heating, or pouring. Preparation by the retailer includes customer utilization of on-premises facilities for the purpose of preparing food for immediate consumption. The division of food and drink into smaller portions is not by itself preparation by the retailer for immediate consumption off of the premises of the retailer. Food prepared for immediate consumption is food prepared to a point generally accepted as ready to be eaten without further preparation and that is sold in a manner that suggests readiness for immediate consumption. Actual immediate consumption of the food is not necessary for the sale to be taxable if the food has been prepared for immediate consumption.

Sales of foods that are often for immediate consumption off of the premises of the retailer include: delicatessen, ice cream, popcorn, and vending machine.

If a vendor does not provide seating or other eating facilities, sales of prepared food and drink by the vendor by such means as vendor-owned vending machines or mobile vendors or from snack shops or concession stands are usually for consumption off of the premises of the retailer. However, if a vendor sells prepared food at retail food establishments without separate seating or eating facilities and on the same premises operates facilities for such activities as recreation, entertainment, education, office work, or manufacturing, then the sales of prepared food can be taxable under 20.5(2)*"a"* depending on the type of the item sold.

The following examples are intended to show some of the situations in which sales are taxable as hot or cold food and drink prepared by the retailer for immediate consumption off of the premises of the retailer.

EXAMPLE A. The owner of a sports stadium leases concession stands at the stadium to a company that operates the stands during events at the stadium. The concession operator prepares and heats sandwiches and sells other food and drink prepared and packaged by others. No separate eating facilities are provided. All sales by the concessionaire are for immediate consumption off of the premises of the retailer. Therefore, only the sales of candy, candy-coated items, taxable beverages, as well as sandwiches and other food prepared by the retailer that are sold hot or cold are taxable.

EXAMPLE B. A convenience store without separate eating facilities sells sandwiches prepared and packaged by a wholesale distributor. Microwave ovens are available for heating the sandwiches. No separate eating facilities are available. Sales of these sandwiches are not taxable because the sandwiches are not for consumption on the premises of the retailer and because the sandwiches were not prepared by the retailer.

EXAMPLE C. An area in an office building is set aside by the owner of the building for food and drink vending machines. Separate eating facilities are provided by the owner of the building. Vending machines and accompanying microwave ovens located in the area are owned and operated by a vending service under contract with the owner of the building. The retailer prepares none of the food placed in

the machines. The vending service is the retailer. Sales of food and drink through the vending machines are for immediate consumption off of the premises of the retailer. Thus, sales of food and drink through the vending machines are not taxable unless the sales involve candy, candy-coated items, or taxable beverages.

d. Sales of food and beverages for human consumption by certain nonprofit organizations. Sales of food and beverages made by certain organizations are exempt. Retroactively to July 1, 1988, the gross receipts from sales of food and beverages for human consumption by organizations are exempt from sales tax if the organization is nonprofit, principally promotes a food or beverage product for human consumption that is produced, grown, or raised in Iowa, and is exempt from federal income tax under Section 501(c) of the Internal Revenue Code. Refunds are allowed for tax, penalty, and interest paid by such organizations on sales made between July 1, 1988, and June 30, 1998. For details, examples, and requirements on claiming a refund, see 701—17.32(422).

This rule is intended to implement Iowa Code Supplement section 422.45 as amended by 1998 Iowa Acts, chapter 1091.

701—20.6(422,423) Vending machines. Before July 1, 1985, any food item which is sold through a vending machine shall not be exempt from sales tax. On or after July 1, 1985, prepared food and drinks sold through vending machines will be taxable either if sold for consumption on the premises of the retailer under 20.5(2)*"a"* or if prepared by the retailer for immediate consumption off of the premises of the retailer under 20.5(2)*"c."* Candy, candy-coated items, candy products, and beverages described in subrule 20.1(3) are taxable when sold through vending machines.

This rule is intended to implement Iowa Code section 422.45.

701—20.7(422,423) Prescription drugs and devices. Sales of prescription drugs and devices as defined in 20.7(1) and dispensed for human use or consumption in accordance with 20.7(2) and 20.7(3) shall be exempt from sales tax. On and after July 1, 1992, rentals of prescription devices as defined in subrule 20.7(1) below are exempt from service tax. Gross receipts from the sales of oxygen prescribed by a licensed physician or surgeon, osteopath, or osteopathic physician or surgeon for human use or consumption are exempt from tax. On and after July 1, 1992, gross receipts from the sales of any oxygen purchased for human use or consumption (whether prescribed or not) are exempt from tax.

20.7(1) *Definitions of "prescription drug" for two periods of time.*

a. For sales occurring between July 1, 1987, and June 30, 1993, a "prescription drug" is any of the following:

(1) A substance for which federal or state law requires a prescription before it may be legally dispensed to the public,

(2) A drug or device that under federal law is required prior to being dispensed or delivered to be labeled with the following statement: "Caution: Federal law prohibits dispensing without a prescription", or

(3) A drug or device that is required by any applicable federal or state law or regulation to be dispensed on prescription only, or is restricted to use by a practitioner only.

b. For sales or rentals occurring on and after July 1, 1993, a "prescription drug" and "medical device" are defined as follows:

(1) A "medical device" means equipment or supplies, including orthopedic or orthotic devices, intended to be prescribed by a practitioner for human use to an ultimate user.

(2) A "prescription drug" is a drug intended to be dispensed for human consumption to an ultimate user pursuant to a prescription or medication order from a practitioner.

(3) An "ultimate user" is any 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. The phrase does not include any entity created by law, such as a corporation or partnership.

On and after July 1, 1993, the sale or rental of a medical device or a prescription drug is exempt from tax only if the device or drug is intended to be prescribed or dispensed to an ultimate user. A drug or device is intended to be prescribed or dispensed to an ultimate user only if the drug or device is obtained by or supplied or administered to an ultimate user for placement on or in the ultimate user's body.

EXAMPLE A: A sports medicine clinic purchases a new type of device which scans the inside of the human body to disclose injured soft tissue. The device can be used only on the order of a practitioner. The device is prescribed, but since, by its very nature, the device cannot be dispensed to an ultimate user, its sale is not exempt from tax.

EXAMPLE B: Pursuant to a practitioner's prescription, a pacemaker is inserted in a patient's body. The pacemaker is dispensed to an ultimate user and its sale is exempt from tax.

EXAMPLE C: A physician prescribes a tranquilizer for a patient who is chronically nervous. The patient uses the prescription to purchase the tranquilizer at a pharmacy. The purchase is exempt from tax.

For purposes of this subrule, any medical device or drug prescribed in writing by a licensed physician, surgeon, osteopath, osteopathic physician or surgeon, or other person authorized by law to an ultimate user for human use or consumption, shall be deemed a device or drug exempt from tax if a prescription is required or permitted under Iowa state or federal law.

EXAMPLE A: A common painkiller is sold over the counter in doses of 200 milligrams per tablet. In doses of 600 milligrams per tablet, federal law requires a prescription before the drug can be dispensed. Sales of 600 milligram tablets by prescription are exempt from tax.

EXAMPLE B: A federal law permits but does not require the painkiller mentioned in Example A to be prescribed by a practitioner in dosages of 200 milligrams per tablet. A practitioner might prescribe the painkiller in the over-the-counter dosage, for example, to impress upon a patient the importance of taking the drug. Sales of 200 milligram tablets by prescription are exempt from tax.

See rules 20.8(422,423), 20.9(422,423) and 20.10(422,423) for examples of medical devices sold without a prescription but exempt from tax.

20.7(2) *Persons authorized to dispense prescription drugs or prescription devices.* In order for a prescription drug or device to qualify for an exemption, it must be dispensed by one of the following persons:

a. Any store or other place of business where prescription drugs are compounded, dispensed or sold by a person holding a license to practice pharmacy in Iowa, and where prescription orders for prescription drugs or devices are received or processed in accordance with pharmacy laws.

b. Persons licensed by the state board of medical examiners to practice medicine or surgery in Iowa.

c. Persons licensed by the state board of medical examiners to practice osteopathic medicine or surgery in Iowa.

d. Persons licensed by the state board of podiatry to engage in the practice of podiatry in Iowa.

e. Persons licensed by the state board of dentistry to practice dentistry in Iowa.

f. Persons licensed prior to May 10, 1963, to practice osteopathy in Iowa.

g. Persons licensed by the optometry examiners as therapeutically certified optometrists.

h. Persons licensed by the board of chiropractic examiners to practice chiropractic in Iowa when dispensing in accordance with Iowa Code chapter 151.

i. Any other person authorized under Iowa law to dispense prescription drugs or devices in this state.

j. Any person licensed in another state in a health field in which, under Iowa law, licensees in this state may legally prescribe drugs or devices.

20.7(3) *Disposition of prescription drugs and devices.* Prescription drugs or devices may be dispensed either directly from one of the persons licensed in 20.7(2) who may also prescribe drugs or devices or by a pharmacist upon receipt of a prescription from one of the persons licensed to prescribe. A prescription received by a licensed pharmacist from one of the persons licensed in 20.7(2) who may also prescribe drugs or devices shall be sufficient evidence that a drug or device is exempt from sales tax. When a person who prescribes a drug or device is also the dispenser, the drug or device will not

require a prescription by such person but the drug or device must be recorded as if a prescription would have been issued or required. If this condition is met, the gross receipts from the sale of the drug or device shall be exempt from sales tax.

20.7(4) *Others required to collect sales tax.* Any person other than those who are allowed to dispense drugs or devices under 20.7(2) shall be required to collect sales tax on any prescription drugs or devices.

20.7(5) *Prescription drugs and devices purchased by hospitals for resale.* This subrule is applicable to both nonprofit and for-profit hospitals for periods prior to July 1, 1998. On and after that date the subrule applies to for-profit hospitals only. Hospitals have purchased prescription drugs or devices for resale to patients and not for use or consumption in providing hospital services only if the following circumstances exist: (1) the drug or device is actually transferred to the patient; (2) the drug or device is transferred in a form or quantity capable of a fixed or definite price value; (3) the hospital and the patient intend the transfer to be a sale; and (4) the sale is evidenced in the patient's bill by a separate charge for the identifiable drug or device. See rule 701—18.31(422,423) for a discussion generally of sales for resale by persons performing a service. Also see rule 701—18.59(422,423) for the exemption applicable to all purchases of goods and services purchased on or after July 1, 1998, by a nonprofit hospital licensed under Iowa Code chapter 135B.

EXAMPLE A: A hospital purchases a bone saw blade and uses the blade to cut the bone of patient X during hip replacement surgery. This dulls the blade to the point that the blade cannot be used again and is discarded. The hospital bills patient X for "one bone saw blade—$30.00". In spite of the separate charge for an identifiable piece of property, the hospital did not purchase the bone saw blade for resale. The blade was used up by the hospital, not transferred to the ownership of X. Since there was no transfer, there was no sale, thus no purchase for resale.

EXAMPLE B: A hospital buys lotion for use in massages given to patients by nurses aides. In spite of the fact that one can argue that a transfer of ownership of the lotion from hospital to patient occurred, the lotion was not purchased for resale. No real intent to sell the lotion to patients ever existed; the lotion was not transferred to patients in a quantity capable of a definite price value; and there is no separate charge for the lotion.

A hospital's purchase of a prescription drug or device for purposes other than resale will still be exempt from tax if a device or drug is intended to be prescribed to an ultimate user and the hospital's use of the drug or device is otherwise exempt under 20.7(1).

This rule is intended to implement Iowa Code section 422.45.

701—20.8(422,423) Exempt sales of nonprescription medical devices, other than prosthetic devices. A prescription is not required for sales of the medical devices mentioned in subrule 20.8(1) to be exempt from tax if those devices are purchased for human use or consumption.

20.8(1) Definitions.

"Anesthesia trays" includes, without limit, paracervical anesthesia trays, saddle block anesthesia trays, spinal anesthesia trays, and continuous epidural anesthesia trays.

"Biopsy" means the removal and examination of tissue from a living body, performed to establish a precise diagnosis.

"Biopsy needles" includes, without limit, needles used to perform liver, kidney, other soft tissue, bone, and bone marrow biopsies. Menghini technique aspirating needles, rosenthal-type needles, and "J" Jamshidi needles are all examples of biopsy needles.

"Cannula" means a tube inserted into a body duct or cavity to drain fluid, insert medication including oxygen, or to open an air passage. Examples are lariat nasal cannulas and ableson cricothyrotomy cannula.

"Catheter" means a tubular, flexible, surgical instrument used to withdraw fluids from or introduce fluids into a body cavity, or for making examinations. Examples are: robinson/nelation catheters, all types of foley catheters (e.g., pediatric and irrigating), three-way catheters, suction catheters, IV catheters, angiocath catheters and male and female catheters.

"Catheter trays." Universal foley catheter trays, economy foley trays, urethral catherization trays and catheter trays with domed covers are nonexclusive examples of these trays.

"Diabetic testing materials" means all materials used in testing for sugar or acetone in the urine, including, but not limited to, Clinitest, Tes-tape, and Clinistix; also, all materials used in monitoring the glucose level in the blood, including, but not limited to, bloodletting supplies and test strips.

"Drug infusion device" means a device designed for the slow introduction of a drug solution into the human body. The term includes devices which infuse by means of pumps or gravity flow (drip infusion).

"Fistula" means an abnormal passage usually between the internal organs or between an internal organ and the surface of the body.

"Hypodermic syringe" means an instrument for applying or administering liquid into any vessel or cavity beneath the skin. This includes the needle portion of the syringe if it accompanies the syringe at the time of purchase, and it also includes replacement needles.

"Insulin" means a preparation of the active principle of the pancreas, used therapeutically in diabetes and sometimes in other conditions.

"Intraocular lens" means a lens located inside the eye.

"Kit" means a combination of medical equipment and supplies used to perform one particular medical procedure which is packaged and sold as a single item.

"Medical device," for the purposes of this rule, means medical equipment or supplies intended to be dispensed for human use with or without a prescription to an ultimate user.

"Myelogram" means a radiographic picture of the spinal cord. A "radiographic" picture is one taken using radiation other than visible light.

"Nebulizer" means a mechanical device which converts a liquid to a spray or fog.

"Oxygen equipment" means all equipment used to deliver medicinal oxygen including, but not limited to, face masks, humidifiers, cannula, tubing, mouthpieces, tracheotomy masks or collars, regulators, oxygen concentrators and oxygen accessory racks or stands.

"Set." See "Kit" above.

"Tray." See "Kit" above.

20.8(2) Sales of the following medical devices are exempt from tax. If a medical device is of such a type that it can be rented as well as sold, the rental of that device is exempt as of the date that the sale of that device is exempt, except as set out in *"b"* below.

a. Insulin, hypodermic syringes, and diabetic testing materials.

b. As of July 1, 1992, sales of oxygen equipment; as of July 1, 1993, the rental of oxygen equipment.

c. Effective July 1, 1994, and retroactive to July 1, 1993, sales of hypodermic needles, anesthesia trays, biopsy trays and needles, cannula systems, catheter trays, invasive catheters, dialyzers, drug infusion devices, fistula sets, hemodialysis devices, insulin infusion devices, intraocular lenses, irrigation solutions, intravenous administering sets, solutions and stopcocks, myelogram trays, nebulizers, small vein infusion kits, spinal puncture trays, transfusion sets and venous blood sets are no longer taxable.

20.8(3) Component parts. Sales of any component parts of the trays, systems, devices, sets, or kits listed above are taxable unless the sale of a component part, standing alone, is otherwise exempt under these rules. For instance, the sale of a biopsy needle or an invasive catheter would be exempt from tax whether or not it was purchased for use as a component part in a biopsy tray or catheter tray, so long as the needle or catheter will be dispensed for human use to an ultimate user. Conversely, sales of catheter introducers, disposable latex gloves, rayon balls, forceps, and specimen bottles are exempt when those items are sold as part of a catheter tray, but are not exempt when those items are sold individually.

20.8(4) Sales of the medical devices mentioned in this rule may be exempt for periods other than those set out in this rule. For instance, a medical device might be prescribed by a practitioner or its sale or rental might be "covered" by Medicare or Medicaid. See subrule 20.7(1) and rule 20.10(422,423) for more information.

This rule is intended to implement Iowa Code section 422.45.

701—20.9(422,423) Prosthetic, orthotic and orthopedic devices.

20.9(1) *Prosthetic devices.* Sales or rental of prosthetic devices shall be exempt from sales tax. This rule is applicable to sales or rental of prosthetic devices made on or after April 1, 1988.

20.9(2) *Orthotic and orthopedic devices.* Sales or rental of orthotic and orthopedic devices prescribed for human use which meet the provisions of subrules 20.9(3) and 20.9(4) shall be exempt from sales tax. This rule is applicable to sales or rental of orthotic and orthopedic devices made on or after April 1, 1988.

20.9(3) *Definitions.*

a. *"Prosthetic device"* means a piece of special equipment designed to be a replacement or artificial substitute for an absent or missing part of the human body and intended to be dispensed with or without a prescription to an ultimate user. See subrule 20.7(1), paragraph *"b,"* for a definition and examples of the term "ultimate user." The term "prosthetic device" includes ostomy, urological, and tracheostomy devices and supplies.

The following is a nonexclusive list of prosthetic devices:

Artificial arteries
Artificial breasts
Artificial ears
Artificial eyes
Artificial heart valves
Artificial implants
Artificial larynx
Artificial limbs
Artificial noses
Artificial teeth
Cardiac pacemakers
Contact lenses
Cosmetic gloves
Dental bridges and implants
Drainage bags
Hearing aids
Ileostomy devices
Intraocular lenses
Karaya paste
Karaya seals
Organ implants
Ostomy belts
Ostomy clamps
Ostomy cleaners and deodorizers
Ostomy pouch
Ostomy stoma caps and paste
Penile implants
Prescription eyeglasses
Stoma bags
Tracheal suction catheters
Tracheostomy care and cleaning starter kits
Tracheostomy cleaning brushes
Tracheostomy tubes
Urinary catheters
Urinary drainage bags
Urinary irrigation tubing
Urinary pouches

b. *"Orthotic device"* means a piece of special equipment designed to straighten a deformed or distorted part of the human body, such as corrective shoes or braces. An orthotic device is an orthopedic device.

c. *"Orthopedic device"* means a piece of special equipment designed to correct deformities or to preserve and restore the function of the human skeletal system, its articulations and associated structures. A hot tub or spa is not an orthopedic device.

The following is a nonexclusive list of orthopedic devices:

Abdominal belts
Alternating pressure mattresses
Alternating pressure pads
Anti-embolism stockings
Arch supports
Arm slings
Artificial sheepskin
Bone cement
Bone nails
Bone pins
Bone plates
Clavicle splints
Corrective braces
Corrective shoes
Crutch cushions
Crutch handgrips
Crutch tips
Crutches
Decubitus prevention devices
Dorsolumbar belts
Dorsolumbar supports
Elastic bandages
Nerve stimulators
Orthopedic implants
Orthopedic shoes
Patient lifts
Plaster (surgical)
Rib belts
Rupture belts
Sacroiliac supports
Sacrolumbar belts
Sacrolumbar supports
Shoulder immobilizers

Bone screws	Elastic supports	Space shoes
Bone wax	Exercise devices	Splints
Braces	Head halters	Traction equipment
Canes	Hernia belts	Transcutaneous electrical nerve stimulators (tens unit)
Casts	Iliac belts	Trapezes
Cast heels	Invalid rings	Trusses
Cervical braces	Knee immobilizers	Walkers
Cervical collars	Lumbosacral supports	Wheelchairs
Cervical pillows	Muscle stimulators	

d. *"Related devices."* Sales or rental of devices which are used exclusively in conjunction with prosthetic, orthotic, or orthopedic devices shall be exempt from tax. *Daw Industries, Inc. v. United States,* 714 F.2d 1140 (Fed. Cir. 1983).

e. *"Medical equipment and supplies."* The scope of the term medical equipment and supplies is broader than the terms prescription drugs or medical devices. While all exempt prescription drugs are medical supplies and all exempt medical devices are medical equipment, not all medical equipment and supplies are exempt medical devices or prescription drugs. The following is a nonexclusive list of items which are medical equipment or supplies, but are not prescription drugs or medical devices exempt from tax under subrules 20.7(1), 20.9(1), 20.9(2), and rule 20.8(422,423). Sales of the below-listed items would generally be taxable. However, for the period between July 1, 1992, and June 30, 1993, sales of the listed items would be exempt from tax if covered by Title XVIII or XIX of the federal Social Security Act. See rule 20.10(422,423).

Adhesive bandages	*Drug infusion devices (other than hypodermic syringes)	*Nebulizers
*Anesthesia trays	Dry aid kits for ears	*Needles (hypodermic)
Aneurysm clips	EKG paper	Overbed tables
Arterial bloodsets	Earmolds	Page turning devices
Aspirators	Electrodes (other than tens units)	Pap smear kits
Athletic supporters	Emesis basins	Paraffin baths
Atomizers	Enema units	Physicians instruments
Autolit	First-aid kits	Pigskin
Back cushions	*Fistula sets	Plasma extractors
Bathing aids	Foam slant pillows	Plasmapheresis units
Bathing caps	Gauze bandages	Plastic heat sealers
Bedpans	Gauze packings	Prescribed device repair kits and batteries
Bedside rails	Gavage containers	
Bedside tables	Geriatric chairs	Respirators
Bedside trays	Grooming aids	Resuscitators
Bedwetting prevention devices	Hand sealers	Sauna baths
Belt vibrators	Hearing aid carriers	Security pouches
*Biopsy needles	Hearing aid repair kits	Servipak dialysis supplies
*Biopsy trays	Heart stimulators	Shelf trays
*Blood administering sets	Heat lamps	Shower chairs
Blood cell washing equipment	Heat pads	Side rails
Blood pack holders	*Hemodialysis devices	Sitz bath kit
Blood pack trays		

Blood pack units
Blood pressure meters
Blood processing supplies
Blood tubing
Blood warmers

Breast pumps
Breathing machines
*Cannula systems
Cardiac electrodes
Cardiopulmonary equipment
*Catheter trays
Chair lifts
Clamps
Clip-on ash trays
Commode chairs
Connectors
Contact lens cases
Contact lens solution
Convoluted pads
Corrective pessaries
Cotton balls
Diagnostic kits
Dialysis chairs
Dialysis supplies
*Dialyzers
Dietetic scales
Disposable diapers
Disposable gloves
Disposable underpads
Donor chairs
Dressings

Hemolators
Hospital beds
Hot water bottles
Ice bags
Ident-a-bands

Incontinent garments
Incubators
Infrared lamps
Inhalators
*Insulin infusion devices
Iron lungs
Irrigation apparatus
*Irrigation solutions
*IV administering sets
IV connectors
*IV solutions
*IV tubing
*Kidney dialysis machines
Laminar flow equipment
Latex gloves
Leukopheresis pumps
Lymphedema pumps
Manometer trays
Massagers
Maternity belts
Medigrade tubing
Modulung oxygenators
Moist heat pads
*Myelogram trays
Myringotomy tubes

*Small-vein infusion kits
Specimen containers
*Spinal puncture trays
Sponges (surgical)
Stairway elevators
Staples
Steri-peel
Stools
*Stopcocks
(intravenous)
Suction equipment
Sunlamps
Surgical bandages
Surgical equipment
Suspensories
Sutures
Thermometers
Toilet aids
Tourniquets
Transfer boards
*Transfusion sets
Tube sealers
Underpads
Urinals
Vacutainers
Vacuum units
Vaporizers
*Venous blood sets
Vibrators
Whirlpools
X-ray film

*Sales of these medical devices are exempt as of July 1, 1993.

20.9(4) *"Prescribed"* shall mean a written prescription or an oral prescription, later reduced to writing, issued by:

a. Persons licensed by the state board of medical examiners to practice medicine or surgery in Iowa.

b. Persons licensed by the state board of medical examiners to practice osteopathic medicine or surgery in Iowa.

c. Persons licensed by the state board of podiatry to engage in the practice of podiatry in Iowa.

d. Persons licensed by the state board of dentistry to practice dentistry in Iowa.

e. Persons licensed prior to May 10, 1963, to practice osteopathy in Iowa.

f. Persons licensed by the optometry examiners as therapeutically certified optometrists.

g. Persons licensed by the board of chiropractic examiners to practice chiropractic in Iowa when dispensing in accordance with Iowa Code chapter 151.

h. Any other person authorized under Iowa law to dispense prescription drugs or medical devices requiring a prescription.

i. Any person licensed in another state in a health field in which, under Iowa law, licensees in this state may legally prescribe drugs.

20.9(5) *Power devices.* Sales or rental of power devices especially designed to operate prosthetic, orthotic or orthopedic devices shall be exempt from tax. This exemption does not include batteries which can be used to operate a number of devices.

This rule is intended to implement Iowa Code sections 422.45(15) and 423.4(4).

701—20.10(422,423) Sales and rentals covered by Medicaid and Medicare. Between July 1, 1992, and June 30, 1993, gross receipts from the sale or rental of drugs, devices, equipment and supplies ("medications") which are covered by Title XVIII (Medicare) or Title XIX (Medicaid) of the federal Social Security Act are exempt from tax.

A "covered sale or rental" is one for which any portion of the cost of medications is paid by the state of Iowa or the federal government as required by the Medicaid or Medicare programs. A sale or rental is "covered" even if a user of medications is required to pay a certain percentage or fixed amount of its cost. Covered sales or rentals include those for which a user of medications is reimbursed the cost of a purchase or rental; or sales or rentals for which any portion of the cost is paid by any private insurance company administering the Medicaid or Medicare programs on behalf of the state of Iowa or the federal government. The direct purchase or rental of any medications by the state of Iowa or the federal government is exempt from tax under existing law, and this rule is not applicable to it.

For an extensive list of medications, the purchase or rental of which is covered by Medicaid, see 441—Chapter 78, Iowa Administrative Code.

701—20.11(422,423) Reporting. Retailers are required to keep records of and report the actual total gross sales for each filing or reporting period. A deduction may be taken for all tax-exempt sales but a record must be kept to substantiate all deductions taken.

Certain retailers finding it difficult to maintain detailed records of their taxable and nontaxable retail sales may alleviate this difficulty by the use of a formula method which will reasonably approximate the actual taxable receipts.

Written approval must be obtained from the audit and compliance division of the department to use a formula method. If a retailer requests an alternate formula, the retailer shall first list the reasons why an alternate formula is necessary and, secondly, shall outline the proposed formula in detail. If approval is given, the department reserves the right to withdraw or require an update in procedure at any time.

The use of the formula is an authorization for reporting the most accurate amount of taxable and nontaxable gross receipts but the retailer shall be responsible for the actual tax liability. Additional assessments may be made if an audit discloses the formula is not producing the proper tax payments.

701—20.12(422,423) Exempt sales of clothing and footwear during two-day period in August. Tax is not due on the sale or use of a qualifying article of clothing or footwear if the sales price of the article is less than $100 and the sale takes place during a period beginning at 12:01 a.m. on the first Friday in August and ending at 12 midnight of the following Saturday. For example, in the year 2000, this period begins at 12:01 a.m. on Friday, August 4, and ends at 12 midnight on Saturday, August 5. Eligible purchases of clothing and footwear are exempt from local option sales taxes as well as Iowa state sales tax.

20.12(1) *Definitions.* The following words and terms, when used in this rule, shall have the following meanings, unless the context clearly indicates otherwise.

"Accessories" include but are not limited to jewelry, handbags, purses, briefcases, luggage, wallets, watches, cufflinks, tie tacks and similar items carried on or about the human body, without regard to whether worn on the body in a manner characteristic of clothing.

"Clothing or footwear" means an article of wearing apparel designed to be worn on or about the human body. For the purposes of this rule, the term does not include accessories or special clothing or footwear or articles of wearing apparel designed to be worn by animals.

"Special clothing or footwear" is clothing or footwear primarily designed for athletic activity or protective use and which is not normally worn except when used for the athletic activity or protective use for which it is designed.

20.12(2) *Exempt sales.* The exemption applies to each article of clothing or footwear selling for less than $100, regardless of how many items are sold on the same invoice to a customer. For example, if a customer purchases two shirts for $80 each, both items qualify for the exemption even though the customer's total purchase price ($160) exceeds $99.99. The exemption does not apply to the first $99.99 of an article of clothing or footwear selling for more than $99.99. For example, if a customer purchases a pair of pants costing $110, sales tax is due on the entire $110.

20.12(3) *Taxable sales.* This exemption does not apply to sales of the following goods or services:

a. Any special clothing or footwear that is primarily designed for athletic activity or protective use and that is not normally worn except when used for the athletic activity or protective use for which it is designed. For example, golf cleats and football pads are primarily designed for athletic activity or protective use and are not normally worn except when used for those purposes; therefore, they do not qualify for the exemption. However, tennis shoes, jogging suits, and swimsuits are commonly worn for purposes other than athletic activity and qualify for the exemption.

b. Accessories, including jewelry, handbags, purses, briefcases, luggage, umbrellas, wallets, watches, and similar items carried on or about the human body, without regard to whether they are worn on the body in a manner characteristic of clothing.

c. The rental of any clothing or footwear. For example, this exemption does not apply to rentals of formal wear, costumes, diapers, and bridal gowns, but would apply to sales of the above items.

d. Taxable services performed on the clothing or footwear, such as garment and shoe repair, dry cleaning or laundering, and alteration services. Sales tax is due on alterations to clothing, even though the alteration service may be performed, invoiced and paid for at the same time as the clothing is being purchased. If a customer purchases a pair of pants for $90 and pays $15 to have the pants cuffed, the $90 charge for the pants is exempt, but tax is due on the $15 alteration charge.

e. Purchases of items used to make, alter, or repair clothing or footwear, including fabric, thread, yarn, buttons, snaps, hooks, belt buckles, and zippers.

20.12(4) *Special situations.*

a. *Articles normally sold as a unit.* Articles that are normally sold as a unit must continue to be sold in that manner if the exemption is to apply; they cannot be priced separately and sold as individual items in order to obtain the exemption. For example, if a pair of shoes sells for $150, the pair cannot be split in order to sell each shoe for $75 to qualify for the exemption. If a suit is normally priced at $225 and sold as a unit on a single price tag, the suit cannot be split into separate articles so that any of the components may be sold for less than $100 in order to qualify for the exemption. However, components that are normally priced as separate articles (e.g., slacks and sport coats, and suit coats and suit pants sold separately prior to the two-day period) may continue to be sold as separate articles and qualify for the exemption if the price of an article is less than $100.

b. *Sales of exempt clothing combined with gifts of taxable merchandise.* When exempt clothing is sold in a set that also contains taxable merchandise as a free gift and no additional charge is made for the gift, the exempt clothing may qualify for this exemption. For example, a boxed set may contain a tie and a free tie tack. If the price of the set is the same as the price of the tie sold separately, the item being sold is the tie, which is exempt from tax if sold for less than $100 during the exemption period.

c. *Layaway sales.* A layaway sale is a transaction in which merchandise is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time and, at the end of the payment period, receives the merchandise. Under Iowa sales tax law, a sale of tangible personal property occurs when a purchaser takes delivery of tangible personal property in return for a consideration. Therefore, if a customer takes delivery of qualifying clothing or

footwear during the exemption period (usually by taking possession of it; see rule 701—16.22(422,423) for general information on layaway sales) that sale of eligible clothing will qualify for the exemption.

20.12(5) *Calculating taxable and exempt gross receipts—discounts, coupons, buying at a reduced price, and rebates.*

a. Discounts. A discount allowed by a retailer and taken on a taxable sale can be used to reduce the sales price of an item. If the discount reduces the sales price of an item to $99.99 or less, the item may qualify for the exemption. For example, a customer buys a $150 dress and a $100 blouse from a retailer offering a 10 percent discount. After applying the 10 percent discount, the final sales price of the dress is $135, and the blouse is $90. The dress is taxable (it is over $99.99), and the blouse is exempt (it is less than $99.99). See rule 701—15.6(422,423) for a definition of the word "discount" and a description of which retailers' reductions in price are discounts which reduce the taxable sales prices of items and which are not.

b. Coupons. When a coupon is issued by a retailer and is actually used to reduce the sales price of any taxable item, the value of the coupon is excludable from the tax as a discount, regardless of whether the retailer is reimbursed for the amount represented by the coupon. Therefore, a retailer's coupon can be used to reduce the sales price of an item to $99.99 or less in order to qualify for the exemption. For example, if a customer purchases a pair of shoes priced at $110 with a coupon worth $20 off, the final sales price of the shoes is $90, and the shoes qualify for the exemption. A manufacturer's coupon cannot be used to reduce the sales price of an item. See 701—subrule 15.6(3).

c. Buy one, get one free or for a reduced price or "two for the price of one" sales. The total price of items advertised as "buy one, get one free," or "buy one, get one for a reduced price," or "two for the price of one" cannot be averaged in order for both items to qualify for the exemption. The following examples illustrate how such sales should be handled.

EXAMPLE 1. A retailer advertises pants as "buy one, get one free." The first pair of pants is priced at $120; the second pair of pants is free. Tax is due on $120. Having advertised that the second pair is free, the store cannot ring up each pair of pants for $60 in order for the items to qualify for the exemption. However, if the retailer advertises and sells the pants for 50 percent off, selling each pair of $120 pants for $60, each pair of pants qualifies for the exemption.

EXAMPLE 2. A retailer advertises shoes as "buy one pair at the regular price, get a second pair for half price." The first pair of shoes is sold for $100; the second pair is sold for $50 (half price). Tax is due on the $100 shoes, but not on the $50 shoes. Having advertised that the second pair is half price, the store cannot ring up each pair of shoes for $75 in order for the items to qualify for the exemption. However, if the retailer advertises the shoes for 25 percent off, thereby selling each pair of $100 shoes for $75, each pair of shoes qualifies for the exemption.

EXAMPLE 3. A retailer advertises shirts as "buy two for the price of one" for $140. Tax is due on $140. Each shirt cannot be rung up as costing $70. However, as described in examples 1 and 2 above, the $140 cost of each shirt can be discounted to bring the price of each shirt within the exemption's limitation.

d. Rebates. Rebates occur after the sale and do not affect the sales price of an item purchased. For example, a customer purchases a sweater for $110 and receives a $12 rebate from the manufacturer. The retailer must collect tax on the $110 sales price of the sweater. See 701—subrule 15.6(2) for additional information regarding rebates.

e. Shipping and handling charges. Shipping charges separately stated and separately contracted for (as explained in rule 701—15.13(422,423)) are not part of the amount used to determine whether the sales price of an item qualifies it for exemption. Handling charges, however, are part of the amount used to make this determination if it is necessary to pay those charges in order to purchase an item.

20.12(6) *Treatment of various transactions associated with sales.*

a. Rain checks. Eligible items purchased during the exemption period using a rain check will qualify for the exemption regardless of when the rain check was issued. However, issuance of a rain check during the exemption period will not qualify an eligible item for the exemption if the item is actually purchased after the exemption period.

b. Exchanges.

(1) If a customer purchases an item of eligible clothing or footwear during the exemption period and later exchanges the item for the same item (different size, different color, etc.), no additional tax will be due even if the exchange is made after the exemption period.

EXAMPLE. A customer purchases a $35 shirt during the exemption period. After the exemption period ends, the customer exchanges the shirt for the same shirt in a different size. Tax is not due on the $35 price of the shirt.

(2) If a customer purchases an item of eligible clothing or footwear during the exemption period and after the exemption period has ended returns the item and receives credit on the purchase of a different item, the appropriate sales tax will apply to the sale of the newly purchased item.

EXAMPLE. A customer purchases a $35 shirt during the exemption period. After the exemption period, the customer exchanges the shirt for a $35 jacket. Because the jacket was not purchased during the exemption period, tax is due on the $35 price of the jacket.

(3) If a customer purchases an item of eligible clothing or footwear during the exemption period and later during the exemption period returns the item and purchases a similar but nonexempt item, the purchase of the second item is not exempt from tax.

EXAMPLE. During the exemption period, a customer purchases a $90 dress that qualifies for the exemption. Later, during the exemption period, the customer exchanges the $90 dress for a $150 dress. Tax is due on the $150 dress. The $90 credit from the returned item cannot be used to reduce the sales price of the $150 item to $60 for exemption purposes.

(4) If a customer purchases an item of eligible clothing or footwear before the exemption period and during the exemption period returns the item and receives credit on the purchase of a different item of eligible clothing or footwear, no sales tax is due on the sale of the new item if it is purchased during the exemption period and otherwise meets the qualifications for exemption.

EXAMPLE. Before the exemption period, a customer purchases a $60 dress. Later, during the exemption period, the customer exchanges the $60 dress for a $95 dress. Tax is not due on the $95 dress because it was purchased during the exemption period and otherwise meets the qualifications for the exemption.

20.12(7) *Nonexclusive list of exempt items.* The following is a nonexclusive list of clothing or footwear, sales of which are exempt from tax during the two-day period in August:

Adult diapers
Aerobic clothing
Antique clothing
Aprons—household
Athletic socks
Baby bibs
Baby clothes—generally
Baby diapers
Baseball caps
Bathing suits
Belts with buckles attached
Blouses
Boots—general purpose
Bow ties
Bowling shirts
Bras
Bridal apparel—sold not rented
Camp clothing
Caps—sports and others
Chefs' uniforms
Children's novelty costumes
Choir robes
Clerical garments
Coats
Corsets
Costumes—Halloween, Santa Claus, etc., sold not rented
Coveralls
Formal clothing—sold not rented
Fur coats and stoles
Galoshes
Garters and garter belts
Girdles
Gloves—cloth, dress and leather
Golf clothing—caps, dresses, shirts and skirts
Graduation caps and gowns—sold not rented
Gym suits and uniforms
Hats
Hiking boots
Hooded (sweat) shirts
Hosiery, including support hose
Jackets
Jeans
Jerseys for other than athletic wear
Jogging apparel
Knitted caps or hats
Lab coats
Leather clothing
Leg warmers
Leotards and tights
Lingerie
Men's formal wear—sold not rented
Neckwear, e.g., scarves
Raincoats and hats
Religious clothing
Riding pants
Robes
Rubber thongs—"flip-flops"
Running shoes without cleats
Safety shoes (adaptable for street wear)
Sandals
Shawls
Shirts
Shoe inserts and laces
Stockings
Suits
Support hose
Suspenders
Sweatshirts
Sweatsuits
Swim trunks
Tennis dresses
Tennis skirts
Ties
Tights
Trousers
Tuxedos (except cufflinks)—sold not rented
Underclothes
Underpants

Cowboy boots
Diapers—cloth and disposable
Dresses
Dress gloves
Dress shoes
Ear muffs
Employee uniforms other than those primarily designed for athletic activity or protective use
Nightgowns and nightshirts
Overshoes
Pajamas
Pants
Panty hose
Prom dresses
Ponchos
Undershirts
Uniforms—generally
Veils
Vests—general, for wear with suits
Walking shoes
Windbreakers
Work clothes

20.12(8) *Nonexclusive list of taxable items.* The following is a nonexclusive list of items, sales of which are taxable during the two-day period in August:

Accessories—generally
Alterations of clothing
Athletic supporters
Backpacks
Ballet shoes
Barrettes
Baseball cleats
Baseball gloves
Belt buckles sold without belts
Belts for weight lifting
Belts needing buckles but sold without them
Bicycle shoes with cleats
Billfolds
Blankets
Boutonnieres
Bowling shoes—rented and sold
Bracelets
Buttons
Chest protectors
Clothing repair
Coin purses
Corsages
Dry cleaning services
Elbow pads
Employee uniforms primarily designed for athletic activities or protective use
Fabric sales
Fishing boots (waders)
Football pads
Football pants
Football shoes
Goggles
Golf gloves
Ice skates
In-line skates
Insoles
Jewelry
Key cases and chains
Knee pads
Laundry services
Life jackets and vests
Luggage
Monogramming services
Pads—elbow, knee, and shoulder, football and hockey
Patterns
Protective gloves and masks
Purses
Rental of clothing
Rental of shoes or skates
Repair of clothing
Roller blades
Safety clothing
Safety glasses
Safety shoes—not adaptable for street wear
Shoes with cleats or spikes
Shoulder pads for dresses and jackets
Shower caps
Skates—ice and roller
Swim fins, masks and goggles
Ski boots, masks, suits and vests
Special protective clothing or footwear not adaptable for street wear
Sports helmets
Sunglasses—except prescription
Sweatbands—arm, wrist and head
Tap dance shoes
Thread
Vests—bulletproof
Weight lifting belts
Wrist bands
Yard goods
Yarn
Zippers

This rule is intended to implement Iowa Code Supplement section 422.45 as amended by 2000 Iowa Acts, House File 2351.

These rules are intended to implement Iowa Code chapters 422 and 423.

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CHAPTERS 21 to 25
Reserved

TITLE III
SALES TAX ON SERVICES

CHAPTER 26
SALES AND USE TAX ON SERVICES

[Prior to 12/12/74, appeared as Ch 5, IDR]
[Prior to 12/17/86, Revenue Department[730]]

701—26.1(422) Definition and scope. This rule provides the scope and definitions applicable to the area of services.

26.1(1) *Definitions.* The phrase "persons engaged in the business of" as used herein shall mean persons who offer the named service to the public or to others for a consideration whether such person offers the service continuously, part-time, seasonally or for short periods. The Iowa sales tax law imposes for periods prior to July 1, 1992, a tax of 4 percent and for periods on or after July 1, 1992, a tax at the rate of 5 percent upon the gross receipts from the rendering, furnishing or performing at retail of certain enumerated services, hereinafter described in more detail in this chapter.

26.1(2) *Taxable and nontaxable services.* When taxable and nontaxable services are performed as part of one transaction and the charge for the transaction is a lump-sum fee that is not itemized or separately contracted, the taxation of the fee for the entire transaction is determined by the predominant service being performed. *Iowa Movers and Warehousemen's Association v. Briggs,* 237 N.W.2d 759 (Iowa 1976). If the predominant service being provided in the transaction is a taxable enumerated service, then the entire fee for the transaction is subject to Iowa tax. However, if the predominant service being performed is a nontaxable service, then the entire fee charged for the transaction is not subject to Iowa tax.

This rule is intended to implement Iowa Code sections 421.14, 422.43, 422.47 and 423.2.

701—26.2(422) Enumerated services exempt. Tax shall not apply on any of the following services.

26.2(1) Services on or connected with new construction, reconstruction, alteration, expansion or remodeling of a building or structure, or the services of a general building contractor, architect or engineer. *Iowa Movers and Warehousemen's Association v. Briggs,* Equity No. 75910, Polk County District Court, May 8, 1974.

26.2(2) A taxable service which is utilized in the processing of tangible personal property for use in taxable retail sales or services.

26.2(3) A service which is performed in interstate commerce in such a manner that imposition of tax would violate the commerce clause of the United States Constitution. Services performed on tangible personal property on or after May 20, 1999, are exempt from tax if those services are performed on property which the retailer of the property transfers to a carrier for shipment to a point outside Iowa, places in the United States mail or parcel post directed to a point outside Iowa, or transports to a point outside Iowa by means of the retailer's own vehicles and which is not thereafter returned to a point within Iowa, except solely in the course of interstate commerce or transportation. This exemption does not apply to services performed on property if the purchaser, consumer, or the agent of either a purchaser or consumer, other than a carrier, takes physical possession of the property in Iowa.

26.2(4) Services rendered, furnished or performed for an "employer" as defined in Iowa Code subsection 422.4(15).

26.2(5) Those exemptions in 701—Chapter 17 applicable to both sale of services and sale of tangible personal property, excluding those exemptions pertaining only to the sale of tangible personal property.

26.2(6) A service which is purchased for resale. A service is purchased for resale when it is subcontracted by the person who is contracted to perform the service. For example:

a. X is a printer and enters into a contract with Y to print 500 bulletins. X subcontracts the job to Z. Z prints the 500 bulletins for X. There is no tax on the contracts between X and Z since X is purchasing the printing service from Z for resale to Y.

b. B owns a used car lot. E purchases an automobile from B. As a condition of such sale, B agrees to make repairs to the automobile. However, B subcontracts such repair work to C. E has agreed to pay B for the repair services and for the sale price of the automobile. Under these circumstances, the repair

services furnished by C to B constitute a sale of such services to B for resale to E who is the consumer of these services.

c. B owns an auto repair shop and C brings an automobile in to have the air conditioner fixed. B is unable to fix the unit so the car is sent to G who is an air conditioning specialist. The sale of G's service to B is a sale for resale by B to C.

26.2(7) Services purchased which are not for resale. For periods beginning July 1, 1978, the tax on services is collectible at the time the service is complete even if not purchased by the ultimate beneficiary. For example:

a. B, a used car dealer, owns a used car lot and contracts an automobile repair job to C. B cannot purchase the repair service for resale merely because at some later date the automobile may be sold. Tax is due when the service is completed for the used car dealer. See *Iowa Auto Dealers v. Iowa Department of Revenue,* 301 N.W.2d 760 (Iowa 1981). This particular example does not apply to denote tax due after June 30, 1981. See subrule 26.2(8).

b. A operates a test laboratory business. A agrees to provide testing services to B. In the course of conducting the tests, A rents equipment from C. In computing the fee which B has agreed to pay A for testing services, A will include A's costs, including the rental A paid to C in rendering the testing services. Under these circumstances, A furnished B with testing services, and not with the equipment rental services which C furnished to A. A is the consumer of the equipment rental services which are not resold to B and B is the consumer of the testing services. See rule 701—15.3(422,423) regarding resale certificates.

26.2(8) Services are exempt from tax when used in the reconditioning or repairing of tangible personal property of the type which is normally sold in the regular course of the retailer's business and which is held for sale by the retailer. For example:

a. A owns a retail appliance store and contracts with B to repair a refrigerator that A is going to resell. A can purchase the repair service from B-tax free because A is regularly engaged in selling refrigerators and will offer the refrigerator for sale when it is repaired.

b. B, a used car dealer, owns a used car lot and contracts with C to repair a used car that B is going to sell. B can purchase the repair service from C tax-free because B is regularly engaged in selling used cars and will sell the used car after it is repaired.

c. C operates a retail farm implement dealership. C accepts a motorboat as part consideration for a piece of farm equipment. C then contracts with D to repair the motor on the boat. C does not normally sell motorboats in the regular course of C's business. Therefore, the service performed by D for C is subject to tax.

d. XYZ owns a retail radio and television store in Iowa and contracts with W to repair a television set that XYZ is going to sell. XYZ can purchase television repair service tax-free from W because XYZ is regularly engaged in selling television sets subject to sales tax. However, in this instance XYZ sells the used television and delivers it into interstate commerce with the result that the Iowa sales tax is not collectible. Regardless of this fact, the exemption is applicable, and no Iowa tax is due for the television repair services performed.

This rule is intended to implement Iowa Code sections 422.42(3), 422.42(13) and 422.43.

701—26.3(422) Alteration and garment repair. Persons engaged in the business of altering or repairing any type of garment or clothing are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. Included are the services rendered, furnished or performed by tailors, dressmakers, furriers and others engaged in similar occupations. When the vendor of garments or clothing agrees to alter same without charge when an individual purchases such garments or clothing, no tax on services, in addition to the sales tax paid on the purchase price of the article, shall be charged. However, if the vendor makes an additional charge for alteration, that additional charge shall be subject to the tax on the gross receipts from the services.

701—26.4(422) Armored car. Persons engaged in the business of either providing armored car service to others or converting a vehicle into an armored car are rendering, furnishing or performing a service,

the gross receipts from which are subject to tax. "Armored car" shall mean a wheeled vehicle affording defensive protection by use of a metal covering or other elements of ordinance. The exemption for transportation services shall not apply.

701—26.5(422) Vehicle repair. Persons engaged in the business of repairing vehicles are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Repair" shall include any type of restoration, renovation or replacement of any motor, engine, working parts, accessories, body or interior of the vehicles, but shall not include installation of new parts or accessories which are not replacements, added to the vehicles. "Vehicle" shall mean a vehicle commonly used on a highway propelled by any power other than muscular power. The exemption for transportation services shall not apply.

A fee charged for the disposal of an item in connection with the performance of an enumerated service is subject to tax if the fee for the disposal of the item is not separately contracted for or itemized in the billing for the charge in the itemized service. However, if the fee charged for disposal of an item in connection with the performance of an enumerated service is itemized or separately contracted for, then the disposal fee is not subject to sales or use tax. Items that may be subject to a disposal fee in connection with a taxable service include, but are not limited to, air filters, oil, tires, and batteries.

Also see 701—subrule 18.31(2) relating to auto body shops.

This rule is intended to implement Iowa Code section 422.43(11).

701—26.6(422) Battery, tire and allied. Persons engaged in the business of installing, repairing, maintaining, restoring or recharging batteries, and services joined and connected therewith, and persons engaged in the business of installing, repairing, or maintaining tires, and services joined or connected therewith, for any type of vehicle or conveyance are rendering, furnishing, or performing a service, the gross receipts from which are subject to tax. The exemption for transportation services shall not apply.

A fee charged for the disposal of an item in connection with the performance of an enumerated service is subject to tax if the fee for the disposal of the item is not separately contracted for or itemized in the billing for the charge in the itemized service. However, if the fee charged for disposal of an item in connection with the performance of an enumerated service is itemized or separately contracted for, then the disposal fee is not subject to sales or use tax. Items that may be subject to a disposal fee in connection with a taxable service include, but are not limited to, air filters, oil, tires, and batteries.

This rule is intended to implement Iowa Code section 422.43.

701—26.7(422) Investment counseling. Persons engaged in the business of counseling others relative to investment in or disposition of property or rights, whether real, personal, tangible or intangible, where a charge is made for counseling, are rendering, furnishing or performing services, the gross receipts from which are subject to tax. Investment counseling does not include the mere management of a business or property. Where a retailer is rendering investment counseling services and also managerial services and the managerial services are not merely incidental to the investment counseling service, nor are the investment counseling services merely incidental to the managerial services and both are substantial and contracted for but neither is specifically identifiable, the tax shall apply to 50 percent of the total gross receipts therefrom.

Prior to July 1, 1987, the gross receipts from investment services rendered, furnished, or performed by trust departments were exempt from tax. On and after July 1, 1987, the gross receipts from investment counseling rendered, furnished, or performed by a trust department are subject to tax.

This rule is intended to implement Iowa Code section 422.43.

701—26.8(422) Bank and financial institution service charges.

26.8(1) *Taxation of service charges before and after July 1, 1987.* Prior to July 1, 1987, only the service charges of a "bank" were subject to tax. On and after July 1, 1987, the service charges of all "financial institutions" are subject to tax. For the period of July 1, 2002, through June 30, 2003, inclusive,

the term "service charges of financial institutions" does not include any surcharge assessed with regard to a nonproprietary ATM transaction.

a. *Bank defined.* A "bank" is an institution empowered to do all banking business, for example, an institution having the power and right to issue negotiable notes, discount notes, and receive deposits. Bank business consists of receiving deposits payable on demand and buying and selling bills of exchange. Savings and loan associations and other financial institutions not commonly considered to be banks are not considered a bank for the purposes of this rule.

b. *Financial institution defined.* "Financial institutions" include and are limited to all national banks; federally chartered savings and loan associations, federally chartered savings banks, and federally chartered credit unions; banks organized under Iowa Code chapter 524; savings and loan associations and savings banks organized under Iowa Code chapter 534; and credit unions organized under Iowa Code chapter 533.

26.8(2) *Service charges characterized.* The gross receipts from "service charges" which relate to a depositor's checking account are the only gross receipts subject to tax under this rule, whether the service charges are those of a bank or of a financial institution. For the purposes of this rule, the term "checking account" is characterized with reference to its common meaning rather than any technical definition. An account in a bank or financial institution is a "checking account" if withdrawals may be made from the account by a written instrument, including but not limited to, instruments such as a check, a draft, or negotiable order of withdrawal (NOW). A checking account may or may not pay interest. NOW and Super NOW accounts are specifically included within the meaning of "checking account." Excluded from the meaning of that term are certificates of deposit. The above definition is meant to be illustrative only and not all-inclusive. In the future, other types of checking accounts may be created which are not described herein.

Since only the gross receipts of bank or financial institution service charges which relate to a "checking account" are subject to tax, the same service performed by a financial institution could be taxable or not taxable depending upon whether it was performed or not performed in relation to a checking account.

EXAMPLE: A bank's customer loses the bank's monthly statement. The bank sends the customer another monthly statement but assesses the customer's account a "duplicate statement fee." If the duplicate statement fee is assessed on a "Super NOW" account, the gross receipts of the duplicate statement fee are subject to tax. If the duplicate statement fee is assessed against a savings account, the gross receipts from the duplicate statement fee are not subject to tax.

All charges relating to a "checking account" are taxable, not only those charges relating to withdrawals from the account by check. For example, charges for withdrawals by "bank card" from a checking account would be subject to tax except for surcharges assessed with regard to nonproprietary ATM transactions during the period set out in subrule 26.8(1). Charges for withdrawals by bank card from a "savings account" would not be subject to tax.

26.8(3) *Various taxable charges.* The following are nonexclusive examples of bank or financial institution service charges which, if related to checking accounts, are subject to tax:

a. Fees for transferring funds from one account to another (if billed to a checking account).

b. Stop payment charges.

c. Debit card replacement fees.

d. Copy and research fees.

e. Bill payment fees.

f. Returned deposit item fees.

g. The fee for issuing a "certified" check. A "certified" check is drawn from a particular account. This is in contrast to a "bank cashier's" check. See below.

26.8(4) *Bank and financial institution service charges not subject to tax.* The following bank and financial institution service charges are representative of those which are usually not subject to tax by virtue of their having no relationship to checking accounts. The list is not exclusive:

a. Safe deposit box fees for safe deposit box rentals.

b. Mortgage and loan fees.

c. Fees charged by trust departments for probating estates or administering trusts, for administering agency accounts, for administering pension and profit-sharing plans, for serving as a stock transfer agent or registrar, for serving as a farm manager, and fees or commissions charged to customers for handling security transactions. However, see rule 26.7(422). As of July 1, 1987, some of their services may be taxable as "investment counseling."

d. Real estate appraisal fees. Fees collected for servicing real estate loans.

e. Fees for servicing real estate loans.

f. Fees charged for contract collection and other collections not related to the maintenance of a checking account.

g. Special lockbox handling charges.

h. Escrow agent fees.

i. Charges for handling and cashing coupons or certificates kept in the bank's possession (safekeeping charges).

j. Finance charges, including credit card charges.

k. Penalty charges (interest forfeiture) on early withdrawal for savings certificates.

l. Charges for purchasing or selling securities for customers (if not a disguise for investment counseling fees).

m. Fees charged for collecting and transferring mortgage payments for a customer (real estate collection exchange).

n. Charges for traveler's or similar type checks, bank cashier's checks, bank drafts, or money orders when these instruments have no relation to a customer's checking account.

o. Exchange fees for all check exchanges.

p. Effective May 30, 2003, fees charged by financial institutions defined in Iowa Code section 527.2 to a noncustomer that are imposed for point of sale, service charge, or access to an automated teller machine.

26.8(5) *Miscellaneous.* Fees charged to a checking account depositor which are, in essence, penalties for a depositor's failure to adhere to contractual obligations with a bank or financial institution are not subject to tax, being more in the nature of "penalties" than service charges. For example, charges for overdrafts and returned checks would not be subject to tax.

Bank service charges which are never assessed against the expense of maintaining a checking account are not subject to tax.

EXAMPLE: Bank B normally charges $10 per month for individual customer's checking accounts. However, if a customer maintains an average monthly balance of at least $750, the bank will charge only a $5 service fee. Customer C maintains an average balance in an account of $1,000 during the month of February. As a result of this, Bank B charges Customer C a service charge of $5, and Customer C never owes Bank B a service charge of $10. Customer C owes sales tax on the $5 rather than the $10 amount.

This rule is intended to implement Iowa Code section 422.43 and section 422.45 as amended by 2003 Iowa Acts, chapter 179, section 126.

701—26.9(422) Barber and beauty. Persons engaged in the business of hair cutting, hair styling, hair coloring, wig care, manicuring, pedicuring, applying facial and skin preparations, and all like activities which tend to enhance the appearance of the individual are rendering, furnishing, or performing a service, the gross receipts from which are subject to tax. Each "barber, beauty or other beautification shop or establishment" shall receive only one permit and remit tax as one enterprise, when operated under a common management.

When an operator leases space and is an independent operator, the lessee shall notify the department and secure a sales tax permit whereby the lessee will be responsible directly for the sales tax due. In order to be considered independent, the lessee must also be independent from the lessor for the purposes of withholding of income tax, unemployment compensation, and social security taxes.

The lessor who has leased a part of the premises shall report to the department the names and addresses of all lessees. If the lessor is accounting for the lessee's sales, the lessor shall, after the name

of each lessee, show the amount of net taxable sales made by the lessee on each report to the department, and which net taxable sales are included in the lessor's return. See 701—15.11(422,423).

This rule is intended to implement Iowa Code section 422.43.

701—26.10(422) Boat repair. Persons engaged in the business of repairing watercraft are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Repair" shall include any type of restoration, renovation or replacement of any motor, engine, working part, accessory, hull or interior of the watercraft, but shall not include installation of new parts or accessories which are not replacements added to such watercraft.

701—26.11(422) Car and vehicle wash and wax. Prior to July 1, 1992, "car wash and wax" was the only type of vehicle washing and waxing which was a taxable service.

On and after July 1, 1992, all "vehicle wash and wax" is subject to tax. The gross receipts from these services shall be taxable whether they are performed by hand, machine or coin-operated devices. A "car" is any self-propelled motor vehicle designed primarily for carrying passengers (nine or fewer) excluding motorcycles and motorized bicycles. Any pickup truck, designed to carry both passengers and cargo, is a "car" for the purposes of this rule. A "vehicle" is any vehicle which is commonly used on a highway and propelled by any power other than muscular power. By way of nonexclusive example, motorcycles, motorized bicycles, all pickup trucks, tractors, and trailers are "vehicles" for the purposes of this rule.

This rule is intended to implement Iowa Code subsection 422.43(1).

701—26.12(422) Carpentry. Persons engaged in the business of repairing, as a carpenter, as the trade is known in the usual course of business, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. Such structures may be either real or personal property.

701—26.13(422) Roof, shingle and glass repair. Persons engaged in the business of repairing, restoring or renovating roofs or shingles, or restoring or replacing glass, whether such glass is personal property or affixed to real property, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

701—26.14(422) Dance schools and dance studios. The gross receipts from services rendered, furnished or performed by dance schools or dance studios are subject to tax. A "dance school" is any institution established primarily for the purpose of teaching any one or more types of dancing. A "dance studio" is any room or group of rooms in which any one or more types of dancing are taught. If other activities such as acrobatics, exercise, baton twirling, tumbling or modeling are taught in dance schools, the gross receipts from the teaching of such activities are subject to tax.

701—26.15(422) Dry cleaning, pressing, dyeing and laundering. Persons engaged in the business of rendering, furnishing or performing dry cleaning, pressing, dyeing and laundering services, including those who engage in business by means of coin-operated washers, irons or mangles, dryers and dry cleaning machines are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. *Rodee, Inc. et al. v. State Tax Commission,* Equity No. 72674, Polk County District Court, December 12, 1968.

701—26.16(422) Electrical and electronic repair and installation. Persons engaged in the business of repairing or installing electrical wiring, fixtures, switches in or on real property or repairing or installing any article of personal property powered by electric current are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. For purposes of this rule only, that electrical portion of the repair and installation of personal property powered by electric current is subject to tax. "Repair" is synonymous with mend, restore, maintain, replace, or service. A "repair" contemplates an existing structure or thing which has become imperfect and constitutes the restoration to the original existing structure that which has been lost or destroyed. A "repair" is not a capital improvement, that is, it does not materially add to the value or substantially prolong the useful life of

the property. "Installation" shall include affixing electrical wiring, fixtures or switches to real property, affixing any article of personal property powered by electric current to any other article of personal property, or making any article of personal property powered by electric current operative with respect to its intended functional purpose. For purposes of 26.2(1), service tax shall not apply on electrical installation or repair when the service is on or connected with a structural change to a building or similar structure, whether the structural change be internal or external to the building or structure. The electrical repair or installation on or connected with new construction on buildings or structures would not be subject to service tax.

On and after July 1, 1984, the services of electronic repair and installation are subject to tax. "Electronic" repair and installation is that which deals with the installation of semiconductors (e.g., vacuum tubes, transistors, or integrated circuits) or with the installation or repair of machinery or equipment which functions mainly through the use of semiconductors. It is this installation or repair of semiconductors or of machines functioning mainly by the use of semiconductors which distinguishes "electronic" installation and repair from "electrical" installation and repair.

On and after July 1, 1985, gross receipts from electrical or electronic installation are exempt from tax if those gross receipts are for the installation of new industrial machinery or equipment. See 701—subrule 18.45(7) for more information regarding this matter.

This rule is intended to implement Iowa Code section 422.43.

701—26.17(422) Engraving, photography and retouching. Prior to July 1, 1984, persons engaged in the business of engraving on wood, metal, stone or any other material, taking photographs, or renovating or retouching an existing likeness or design are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Photography" is the art or process of producing images or objects upon a photosensitive surface by the chemical action of light or other radiant energy. For treatment of these services on and subsequent to July 1, 1984, see rule 701—16.51(422,423).

701—26.18(422,423) Equipment and tangible personal property rental.

26.18(1) *Prior to July 1, 1984, only if tangible personal property was classified as "equipment" was its rental subject to tax.* Effective July 1, 1984, the rental of all tangible personal property, including equipment, is subject to tax.

a. Periods prior to July 1, 1984, equipment rental. Persons furnishing equipment to other persons for their use are rendering, furnishing, or performing a service subject to tax measured by the gross receipts or fees charged for the use of such equipment. In general usage, equipment refers to implements or tools used to produce a final product or achieve a given result. *KTVO, Inc. and KBIZ, Inc. v. Bair,* 255 N.W.2d 111 (Iowa 1977), and *State v. Bishop,* 257 Iowa 336 (1965). Not all tangible personal property is equipment and for the purpose of this rule, equipment will be considered to be an implement or a tool used to produce a final product or to achieve a given result. Thus, "equipment rental" would be applicable to such items as appliances, machinery, and utensils necessary to carry out a given task. It also includes such nonexclusive items as articles of clothing, safety shoes, police uniforms, and hard hats which contribute to the purpose of a person obtaining them for use. Whether the equipment rented functions in a state of rest or in a state of motion, it is taxable.

b. In order to determine whether a particular fee is charged for the use of equipment or for the rendering of a nontaxable service, the department looks at the substance, rather than the form, of the service being rendered. When the possession and use of equipment by the recipient is merely incidental as compared to the nontaxable service performed, all the gross receipts are derived from the furnishing of such nontaxable service and unless a separate fee or charge is made for the possession and use of equipment, no gross receipts are derived from the service of equipment rental. When the nontaxable service is merely incidental to the possession and use of the equipment by the recipient, all the gross receipts are derived from the furnishing of equipment rental and unless a separate fee or charge is made for the nontaxable service, no gross receipts are derived from the nontaxable service. When an equipment rental agreement contains separate fee schedules for rent and for nontaxable service, only the gross

receipts derived from the equipment rental service are subject to tax. This rule is not to be so construed as to be a variance with Iowa Code subsection 422.45(2) concerning transportation.

c. When equipment as defined herein is rented for a flat fee per month, per year, or for other designated periods, plus an additional fee based on quantity and capacity of production or use, the entire charge is taxable. The only exception is if the additional fee is a royalty payment. A royalty fee is not subject to tax if (a) it is separately contracted for and separately stated in the contract or on the billing, and (b) the royalty represents a true royalty. In determining whether a particular payment constitutes a true royalty, the following will be considered:

1. The intentions of the parties to the transaction.
2. The existence of a patent.
3. The relationship between the size of the royalty payment and the gross sales or manufacture of the patented equipment.
4. The primary business of the lessor.
5. Whether the royalty was paid for the technical know-how of the patented equipment.
6. Whether the royalty was paid for the privilege of using the patented equipment.

When examining the equipment rental agreement, substance will prevail over form and terminology employed by the parties to the agreement will not, in itself, be determinative of whether a true royalty exists. See *State v. Rockaway Corp.* (Ala. Civ. App. 1977), 346 So.2d 444, Cert. denied, 346 So.2d 451 (Ala. 1977).

d. The portion of this subrule relating to fees based on quantity and capacity of production use is effective for periods beginning on or after July 1, 1978.

26.18(2) *For periods beginning July 1, 1984, rental of tangible personal property.* The gross receipts from the rental of all tangible personal property shall be subject to tax. Tangible personal property is any personal property which is visible and corporeal, has substance and body or can be touched or handled. *RAMCO Inc. v. Director, Department of Revenue,* 248 N.W.2d 122 (Iowa 1976). Electromagnetic waves and other types of waves are not tangible personal property. *RAMCO Inc.* supra. Thus, the receipt of signals from a pay television company does not involve the rental of tangible personal property. See *Indiana Dept. of State Revenue, Sales Tax Division v. Cable Brazil Inc.,* 380 N.E.2d 555 (Ind. App. 1978). At common law, rental consists of consideration paid for the use or occupation of property, but not for passage of title, Black's Law Dictionary 1461 (4th Ed. 1968).

a. Rentals not taxed under previous law. Prior to July 1, 1984, only if tangible personal property consisted of "equipment" was its rental taxable. Equipment rental continues to be a service subject to tax under the present law. Equipment refers to implements or tools used to produce a final product or achieve a given result. *KTVO, Inc. and KBIZ, Inc. v. Bair,* 255 N.W.2d 111 (Iowa 1977) and *State v. Bishop,* 257 Iowa 336 (1965). The rental of certain tangible personal property not considered to be equipment is now subject to tax. As nonexclusive examples, clothing rental, such as tuxedos and formal gown rental, or costume rental; picture, painting, sculpture and other art work rental; plant rental to homes or businesses; and furniture rental are now subject to tax.

b. Rental of real property distinguished from rental of tangible personal property. If a rental contract allows the renter exclusive possession or use of a defined area of real property and, incident to that contract, tangible personal property is provided which allows the renter to utilize the real property, if there is no separate charge for rental of tangible personal property, the gross receipts are for the rental of real property and are not subject to tax.

If a person rents tangible personal property and, incidental to the rental of the property, space is provided for the property's use, the gross receipts from the rental shall be subject to tax. It may at times be difficult to determine whether a particular transaction involves the rental of real property with an incidental use of tangible personal property or the rental of tangible personal property with an incidental use of real property.

c. Rental of tangible personal property and rental of fixtures. The rental of tangible personal property which shall, prior to its use by the renter under the rental contract, become a fixture shall not be subject to tax. Such a rental is the rental of real property rather than tangible personal property. In general, any tangible personal property which is connected to real property in a way that it cannot be

removed without damage to itself or to the real property is a fixture. *Equitable Life Assurance Society of the United States v. Chapman,* 282 N.W.2d 355 (Iowa 1983) and *Marty v. Champlin Refining Co.,* 36 N.W.2d 360 (Iowa 1949). The rental of a mobile home or manufactured housing, not sufficiently attached to realty to constitute a fixture, is room rental rather than tangible personal property rental and subject to tax on that basis; see *Broadway Mobile Home Sales Corp. v. State Tax Commission,* 413 N.Y.S.2d 231 (N.Y. 1979). See also rule 701—18.40(422,423).

d. Rental of tangible personal property embodying intangible personal property rights, transactions exempt and taxable. Under the law, the gross receipts from rental of tangible personal property include "royalties, and copyright and license fees." The department interprets the legislature's use of this phrase as evidence of the legislature's intent to tax the rental of all property which is a tangible medium of expression for the intangible rights of royalties, copyright and license fees. Thus gross receipts from the rental of films, video disks, video cassettes, and any computer software (other than rental of custom programs, see 701—paragraph 18.34(3)*"a"*) which is the tangible means of expression of intangible property rights is subject to tax. The rental of such tangible property shall be subject to tax whether the property is held for rental to the general public or for rental to one or a few persons. See *Boswell v. Paramount Television Sales, Inc.,* 282 So.2d 892 (Ala. 1973). See rule 17.18(422,423) regarding the exemption from the requirements of this subrule for rental of films, video tapes and other media to lessees imposing a taxable charge for viewing or rental of the media or to lessees who broadcast the contents of this media for public viewing or listening.

e. Deposits. Taxability of a deposit required by an owner of rental property as a condition of the rental depends upon the type of deposit that is being required. A deposit subject to forfeiture for failure to comply with the rental agreement is not subject to tax. This type of deposit is separate from the rental payments and therefore is not taxable as part of the rental service. Such deposits may include those for reservation, late return of the rental property or damage to the rental property. Deposits not subject to forfeiture which represent part of the rental receipts are considered part of the taxable services and are subject to tax. Such deposits may include a deposit of the first rental payment which is applied to the rental receipts.

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

701—26.19(422) Excavating and grading. Persons engaged in the business of excavating and grading for purposes other than new construction, reconstruction, alteration, expansion or remodeling are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

26.19(1) For purposes of this rule, *"excavation"* shall mean the digging, hauling, hollowing out, scooping out or making of a cut or hole in the earth. The word excavate ordinarily comprehends not only the digging down into the earth but also the removal of whatever material or substance is found beneath the surface. *Rochez Brothers v. Duricka,* 374 Pa. 262, 97 A.2d 825 (1953).

26.19(2) *"Grading"* shall mean, in its commonly accepted sense, a physical change of the earth's structure by scraping and filling in the surface to reduce it to a common level; the reducing of the surface of the earth to a given line fixed as the grade, involving excavating or filling or both.

When it is determined that the enumerated service of excavating or grading is present, the situation must be further examined to determine if the new construction exemption applies. See chapter 248(9), Acts of the Sixty-third General Assembly.

701—26.20(422) Farm implement repair of all kinds. Persons engaged in the business of repairing, restoring or renovating implements, tools, machines, vehicles or equipment, but not including installation of new parts or accessories which are not replacements, used in the operation of farms, ranches or acreages on which growing crops of all kinds, livestock, poultry or fur-bearing animals are raised or used for any purpose are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

701—26.21(422) Flying service. Persons engaged in the business of teaching a course of instruction in the art of operation and flying of an airplane, and instructions in repairing, renovating, reconditioning an

airplane, or any other related service are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. While not intended to be inclusive, the following is a list of taxable and nontaxable charges related to flight instruction.

Charges for instructors' services, ground instruction and ground school are taxable.

Charges for dual flying and for students learning to fly with an instructor are taxable. The instruction is taxable as a flying service. The plane rental is also taxable. This paragraph shall become effective for periods beginning on or after April 1, 1992.

Flying service shall also include all other types of flying service, except agricultural aerial application services, aerial commercial and chartered transportation services and those services exempt by 26.2(3).

This rule is intended to implement Iowa Code section 422.43.

701—26.22(422) Furniture, rug, upholstery, repair and cleaning. Persons engaged in the business of repairing, restoring, renovating or cleaning furniture, rugs or upholstery are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. Wherever used, "furniture" shall include all indoor and outdoor furnishings. "Rugs" shall include all types of rugs and carpeting. "Upholstery" shall include all materials used to stuff or cover any piece of furniture.

701—26.23(422) Fur storage and repair. Persons engaged in the business of storing for preservation and future use, refurbishing, repairing and renovating, including addition of new skins and furs, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. The term "furs" shall include both natural and manufactured simulated products resembling furs.

701—26.24(422) Golf and country clubs and all commercial recreation. All fees, dues or charges paid to golf and country clubs are subject to tax. "Country clubs" shall include all clubs or clubhouses providing golf and other athletic sports for members. Persons providing facilities for recreation for a charge are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Recreation" shall include all activities pursued for pleasure, including sports, games and activities which promote physical fitness, but shall not include admissions otherwise taxed under Iowa Code section 422.43.

Dance schools are the only schools the services of which are taxable under Iowa Code subsection 422.43(9). See rule 26.14(422) on dance schools and dance studios. The gross receipts from any school providing training services in any activity pursued for pleasure or recreation shall not be subject to tax, unless the school is a dance school.

If a person provides both facilities for recreation and instruction in recreational activities, charges for instruction in the recreational activities shall not be subject to tax if all of the following circumstances exist:

1. The instruction charges are contracted for separately, separately billed, and reasonable in amount when compared to the taxable charges of providing facilities for recreation.

EXAMPLE: An ice skating rink offers three membership plans. The first membership plan provides only instruction in the activity of ice skating. The second plan allows for the use of the rink's facilities, but provides for no instruction in ice skating. The third plan allows the customer to participate in a certain number of ice skating classes and also allows use of the rink's facilities without instruction. Customer charges for the first plan would not be subject to tax. Customer charges for the second plan would be subject to tax. Charges for the third plan would be subject to tax if billed in one lump-sum. If, under the third plan, charges to the customer for instruction and use are separately stated, and the charges for instruction are not unreasonable, the charges for instruction shall be exempt from tax. If it is necessary to pay for instruction to secure use of the facilities for recreation, charges for the instruction are a part of the gross receipts from commercial recreation and shall be subject to tax.

2. The persons receiving the instruction must be under the guidance and direction of a person training them in how to perform the recreational activity. If the persons receiving what purports to be "instruction" are allowed any substantial amount of time to pursue recreational activities, no instruction is taking place. The instruction should be received in what would ordinarily be thought of as a "class" with a fixed time

and place for meeting. The instruction need not be received in what would ordinarily be thought of as a "classroom," but the instructor and the persons receiving instruction should be segregated from persons engaging in recreational activity insofar as this is possible. Instruction may still occur if complete or partial segregation is impossible.

EXAMPLE: A golf pro offers instruction to students on a golf course. The students cannot circulate around the golf course in a group with the golf pro because this would slow the play of golfers following such a group and lead to complaints. The students circulate on the course individually, and the golf pro observes the play of each student and comments upon it. Even though no segregation of the individual students into any sort of a class is possible, the students are receiving instruction from the golf pro and, therefore, no taxable event occurs.

EXAMPLE: A retailer maintains a golf driving range. There are separate tee-off positions for each customer to practice driving golf balls. There is also an instructor in driving present. The instructor cannot reserve individual tee-off positions for instruction of students because the positions are filled on a first-come-first-served basis. When students come for instruction, the instructor must make use of whatever tee-off positions are available. Even though segregation of students from other customers is impossible, instruction exists and, therefore, no taxable event occurs.

3. The "instruction" must impart to the learner a level of knowledge or skill in the recreational activity which would not be known to the ordinary person engaging in the recreational activity without instruction. Also, the person providing the instruction must have received some special training in the recreational activity taught if charges for that person's instruction are to be exempt from tax.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.25(422) House and building moving. Persons engaged in the business of moving houses or buildings from one location to another, whether for repair or otherwise, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. Charges for house and building moving are not considered transportation charges, and are, therefore, subject to the imposition of sales tax.

This rule is intended to implement Iowa Code section 422.43.

701—26.26(422) Household appliance, television and radio repair. Persons engaged in the business of repairing household appliances, television sets, or radio sets, but not including installation of new parts or accessories which are not replacements, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Repair" shall include mending or renovation of existing parts of such household appliances, television sets and radio sets, as well as replacing defective parts of such articles. "Household appliances" shall include all mechanical devices normally used in the home, whether or not used therein.

701—26.27(422) Jewelry and watch repair. Persons engaged in the business of repairing jewelry or watches are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Jewelry or watch repair" shall include any type of mending, restoration or renovation of parts, or replacement of defective parts.

701—26.28(422) Machine operators. Persons engaged in the business of operating machines of all kinds, belonging to other persons, where a fee is charged, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Machine operator" is a person who exercises the privilege of managing, controlling and conducting a mechanical device or a combination of mechanical powers and devices used to perform some function and produce a certain effect or result. For example, the operation of the following machines is a taxable service: typewriters, manufacturing machinery and equipment, computers, calculators, and cash registers. This list of not all-inclusive. Telephones, automobiles and airplanes are not machines for the purpose of this rule, and the operation of these items is not the taxable service of a machine operator.

The service of machine operator is not subject to tax when performed by an employee directly for that employee's employer. In addition, to be taxable as machine operation, the operation of the machine must be the primary service that is being performed and not just incidental to the performance of the primary service being rendered.

Below are examples regarding the service of "machine operator":

EXAMPLE 1. Employee 1 is hired to perform data entry work on a computer for the employer. The services of employee 1 are that of machine operator, but are not subject to tax because employee 1 is performing the services directly for the employer.

EXAMPLE 2. ABC Company hires a person from a temporary employment agency to perform data entry work on a computer. ABC Company pays a set per-hour fee for the services of the data entry person. The service performed by the person is that of a machine operator. ABC Company must pay sales or use tax on the fee imposed by the temporary employment agency.

EXAMPLE 3. ABC Company hires telemarketing personnel from a temporary employment agency for sales calls during the holiday season. ABC Company does not owe tax on the fee charged by the temporary employment agency. The services of a telemarketer would not be taxable as those of a machine operator since the telephone is not a machine for the purpose of this rule.

This rule is intended to implement Iowa Code section 422.43.

701—26.29(422) Machine repair of all kinds. Persons engaged in the business of repairing machines of all kinds are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Machine" shall include all devices having moving parts and operated by hand, powered by a motor, engine, or other form of energy. It is a mechanical device or combination of mechanical powers and devices used to perform some function and produce a certain effect or result. A musical instrument does not constitute a machine and therefore, musical instrument repairs are not subject to tax.

701—26.30(422) Motor repair. Persons engaged in the business of repairing motors powered by any means whatsoever are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Repair" shall include mending or renovation of parts, replacements of defective parts or subassemblies of the motor, but shall not include installation of new parts or accessories which are not replacements.

701—26.31(422) Motorcycle, scooter and bicycle repair. Persons engaged in the business of repairing motorcycles, scooters and bicycles are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Repair" shall include mending or renovation of parts, replacement of defective parts or subassemblies, but shall not include installation of new parts or accessories which are not replacements.

701—26.32(422) Oilers and lubricators. Persons engaged in the business of oiling, changing oils or lubricating and greasing vehicles and machines of all types having moving parts or powered by a motor or engine or other form of energy, heavy equipment vehicles or implements, whether such equipment functions in a state of rest or in a state of motion, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

701—26.33(422) Office and business machine repair. Persons engaged in the business of repairing office and business machines are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Repair" shall include mending and renovation of existing parts, replacement of defective parts or subassemblies, but shall not include installation of new parts or accessories which are not replacements.

701—26.34(422) Painting, papering and interior decorating. Persons engaged in the business of painting, papering and interior decorating are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Painting" shall mean covering of both interior and exterior surfaces of tangible personal or real property with a coloring matter and mixture of a pigment or sealant,

with some suitable liquid to form a solid adherent when spread on in thin coats for decoration, protection or preservation purposes and all necessary preparations thereto, including surface preparation. The following are not within the definition of painting: automobile undercoating, the coating of railroad cars, storage tanks, or the plating of tangible personal property with metals such as but not limited to chromium, bronze, tin, galvanized metal, or platinum. "Papering" shall mean applying wallpaper or wall fabric to the interior of houses or buildings and all necessary preparations thereto including surface preparation. "Interior decoration" shall mean the service of designing or decorating the interiors of houses or buildings, counseling with respect to such designing or decoration or the procurement of furniture fixtures or home or building decorations. When any person provides interior decorating service without charge as an incident to the sale of real or personal property, no sales tax, in addition to that paid on the purchase price or any part thereof of the personal property, shall be charged.

This rule is intended to implement Iowa Code section 422.43.

701—26.35(422) Parking facilities. Persons engaged in the business of operating a parking facility for a fee are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. For the purpose of this rule, a "parking facility" is any place that is built, installed or established for the purpose of parking a vehicle for a fixed interval. It is irrelevant whether the charge is by the hour, day, month or any other period of time.

This rule is intended to implement Iowa Code section 422.43.

701—26.36(422) Pipe fitting and plumbing. Persons engaged in the business of pipe fitting and plumbing are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Pipe fitting and plumbing" shall mean the trade of fitting, threading, installing and repairing of pipes, fixtures or apparatus used for heating, refrigerating, air conditioning or concerned with the introduction, distribution and disposal of a natural or artificial substance.

701—26.37(422) Wood preparation. Persons engaged in the business of wood preparation or treatment for others are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Wood preparation" shall include all processes whereby wood is sawed from logs into measured dimensions, planed, sanded, oiled or treated in any manner before being used to repair an existing structure or create a new structure or part thereof. But where such preparation is engaged in solely for the purpose of processing lumber or wood products for ultimate sale at retail, such "preparation" may not be deemed as rendering, furnishing or performing a service, the gross receipts from which would be subject to tax.

701—26.38(422) Private employment agency, executive search agency. Private employment agencies engaged in the business of providing listings of available employment, counseling others with respect to future employment or aiding another in any way to procure employment are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. The aforementioned services are subject to tax, regardless of whether they are rendered for the prospective employee or prospective employer.

For periods commencing after June 30, 1982, the gross receipts of private employment agencies from services rendered for placing a person in employment where the person's principal place of employment is to be located outside the state of Iowa are not taxable. Principal place of employment ordinarily means the work location of the employee.

EXAMPLE: ABC Company contracts with XYZ, an Iowa employment agency, to secure an employee to work at a production plant in Illinois. XYZ Employment Agency finds a suitable employee that is hired by ABC Company. Since the employee's principal place of employment is outside the state, there is no tax due on the gross receipts of XYZ Employment Agency for securing that employment.

EXAMPLE: Hometown Sales Company contracts with ABC Employment Agency to secure a salesperson to travel Iowa, Missouri and Nebraska. Both Hometown Sales Company and ABC Employment Agency are located in Iowa. ABC Employment Agency is successful in finding a

salesperson for Hometown Sales Company. Since this salesperson will be traveling in three states the gross receipts of ABC Employment Agency from placing the employment of this salesperson are taxable as the principal place of the salesperson's employment is not outside the state of Iowa.

Executive search agencies are engaged in the business of securing employment for top-level management positions. Effective July 1, 1984, the gross receipts from services provided by executive search agencies are subject to tax. For any period prior to that date, their gross receipts are not taxable. Prior to July 1, 2002, it was necessary for an executive search agency to be "licensed" for its services to be taxable. On and after that date, the services of an unlicensed executive search agency are taxable. The exclusion from taxation for the service of placing a person in employment if that person's principal place of employment is to be located outside of Iowa which is applicable to private employment agencies is not applicable to executive search agencies. The gross receipts from the services of executive search agencies performed in Iowa are subject to tax.

The following nonexclusive elements distinguish the difference between executive search agencies and private employment agencies. These elements should be used to distinguish between taxable and nontaxable services for any period prior to July 1, 1984.

	Executive Search Firm	Employment Agency
1.	Top level management positions—Salaries over $30,000.	All levels of jobs in an organization. All salary levels.
2.	Serve only a few clients (5 or 6) at one time. Employers only.	Large number of clients at all times. Both possible employers and employees.
3.	Send information regarding one individual to one possible employer only. Résumés never circulated to other possible employers.	Individual's résumé circulated to many possible employers.
4.	Extensive analysis of the position to be filled. Extensive analysis of the individuals who are candidates. Prepare detailed professional assessment of strengths and weaknesses of individuals.	No extensive analysis of the position or the individual.
5.	Make travel arrangements for interviews; conduct salary negotiations; perform follow-up studies.	Normally does not make travel arrangements for interviews; does not conduct salary negotiations; does not perform detailed follow-up studies.
6.	Only paid by the company seeking the employee.	Paid by either the company or the job seeker.
7.	Paid on retainer or by an hourly charge or by contract. Paid whether or not individual is hired.	Paid on a contingent-fee basis. Paid only if a referred person is hired.
8.	Does not advertise available positions.	Does engage in general advertising of available positions.
9.	Overall placement of individual requires extensive and sophisticated analysis of position and individual.	Overall placement of individual is not as extensive or sophisticated.

This rule is intended to implement Iowa Code section 422.43 as amended by 2002 Iowa Acts, Senate File 2305, section 6.

701—26.39(422) Printing and binding. Prior to July 1, 1984, persons engaged in the business of printing or binding any printed matter other than for the purpose of ultimate sale at retail are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Printing" shall include any type of printing, lithographing, mimeographing, photocopying, and similar reproduction. The following activities are representative of services, the gross receipts from which are subject to tax: the printing of pamphlets, leaflets, stationery, envelopes, folders, bond and stock certificates, abstracts,

law briefs, business cards, matchbook covers, campaign posters, and banners for the users thereof. For the treatment of printing and binding on and after July 1, 1984, see rule 701—16.51(422,423).

701—26.40(422) Sewing and stitching. Persons engaged in the business of sewing and stitching are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

701—26.41(422) Shoe repair and shoeshine. Persons engaged in the business of repairing or shining any type of footwear, such as shoes, boots and sandals, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Repair" shall include the mending or renovation of existing parts and the replacement of defective parts, but shall not include installation of new parts or accessories which are not replacements of the footwear in any manner. "Shoeshine service" is meant to be the shining of any type of footwear.

701—26.42(422) Storage warehousing, storage locker, and storage warehousing of raw agricultural products and household goods.

26.42(1) *Definitions.*

a. For the purpose of this rule, raw agricultural products include, but are not limited to, corn, beans, oats, milo, fruits, vegetables, animal semen, and like items that have not been subjected to any type of processing. Grain drying is not processing.

b. A "warehouse" is defined as an enclosure not readily accessible to the public, which would normally require a roof of some sort or some type of structure designed to afford protection to the products. Placing the products on the ground, even though surrounded by a fence, would not constitute a warehouse. *Lynch v. State*, 1889, 89 Ala. 7 So. 829.

c. "Household goods" means tangible personal property located in a person's residence, and is not inventory.

d. For the purpose of this rule, the term "principal" shall refer to the person who ships raw agricultural products or household goods to the warehouse, or the person who is billed by the warehouse for service performed. The term "purchaser" shall refer to the person who purchases the goods from the principal.

26.42(2) *Taxation of household goods.* Beginning April 1, 1992, the gross receipts on the storage of household goods in a warehouse are subject to tax.

a. For the purposes of this rule, storage in transit (S.I.T. storage), consists of household goods stored for less than 180 days. Permanent storage consists of household goods stored for 180 days or more.

b. Storage in transit with an origin in Iowa and a destination outside Iowa is exempt from tax.

c. Storage in transit with an origin outside the state of Iowa and a destination in Iowa is subject to tax.

d. Storage in transit with an origin and destination within Iowa is subject to tax.

26.42(3) *Storage and delivery.*

a. *Raw agricultural products or household goods originating inside the state and delivered inside the state.* Assuming the raw agricultural products or household goods originate in Iowa, are stored in an Iowa warehouse and, after storage, are delivered to a destination in Iowa, the tax is imposed on storage pursuant to Iowa Code section 422.43. The interstate commerce exemption in Iowa Code section 422.42, subsections 13 and 16, is not applicable.

b. *Raw agricultural products or household goods originating outside the state and delivered inside the state.* Assuming the raw agricultural products or household goods originate from a principal outside the state of Iowa, are sent to an Iowa warehouse and, after storage, are delivered to a destination in Iowa; tax on these warehouse services has been imposed since October 1, 1967, and there is no interstate commerce exemption, either under the United States Constitution, or under the statutory exemption for services performed on tangible personal property delivered into interstate commerce. The delivery, in this example, is clearly intrastate and the storage is subject to tax. *Iowa Movers and Warehousemen's Association v. Briggs,* 237 N.W.2d 759 (Iowa 1976).

c. Raw agricultural products or household goods originating inside or outside of the state and shipped by the warehouse out of Iowa. Assuming the raw agricultural products or household goods originated either in Iowa or outside of Iowa, are shipped to an Iowa warehouse and, after storage, are sent by the warehouse directly out of Iowa or are given to a common carrier to be shipped out of Iowa, with destination being out of Iowa; the storage of the raw agricultural products or household goods is exempt.

d. Raw agricultural products or household goods originating either inside the state or outside the state and the principal or purchaser of the raw agricultural products picks them up at the Iowa warehouse. Assuming the raw agricultural products or household goods originated either in Iowa or out of Iowa, and are sent to an Iowa warehouse for storage and, upon the completion of the storage, the principal directs the warehouse to allow the purchaser of the raw agricultural products or household goods to pick them up at the Iowa warehouse; the warehouse service would be subject to Iowa sales tax.

This example involves a situation similar to the one found in *Dodgen Industries, Inc. v. Iowa State Tax Commission,* 160 N.W.2d 289 (Iowa 1968).

In that case, the court held that where the sale of goods is made by an Iowa principal, delivery of the goods physically made to the purchaser in Iowa constitutes an intrastate delivery, and the Iowa sales tax applies. Therefore, where physical delivery of goods in the form of transfer of possession is made from the Iowa warehouse directly to the principal or the purchaser, such direct delivery constitutes a delivery into intrastate commerce and the warehouse services performed on these goods would be subject to Iowa sales tax.

26.42(4) *Other charges invoiced separately.*

a. Transportation. The gross receipts from the sale, furnishing, or service of transportation services are exempt from the Iowa sales and use taxes under Iowa Code subsection 422.45(2). This would include delivery charges which are itemized or shown separately on the customer's invoice.

b. Handling. A charge assessed for labor and equipment used to unload rail cars, trucks, or other vehicles, place the raw agricultural products or household goods in storage and remove from storage and load rail cars, trucks, or other vehicles. Handling charges billed after October 1, 1967, are exempt as transportation charges if they are itemized or shown separately on the customer's invoice. If handling charges are not ascertainable on the invoice, the total amount thereon is deemed to be storage and, therefore, taxable.

c. Clerical. A charge assessed for special services such as, but not limited to, compiling stock reports and statements, reporting serial numbers, physical checking of raw agricultural products, and reporting by special report of receipt transactions and shipments. If such charges are predominantly related to storage, they are subject to tax. If clerical charges are predominantly related to transportation activities, they are exempt from tax.

d. Communications. A charge assessed for postage, telephone, teletype, or telegram, and for other than normal communication at the request of the customer. If such charges are predominantly related to storage, they are subject to tax. If communication charges are predominantly related to transportation activities, they are exempt from tax.

e. Car cleaning. A charge assessed for cleaning rail cars of bracing and debris as required by the Interstate Commerce Commission. This is related to transportation activities and not subject to tax.

f. Recoupering. A charge assessed for handling merchandise damaged in transit so as to prevent further loss due to transit damage. This is predominantly a charge for storage and is subject to tax unless it can be shown that it is predominantly related to transportation.

g. Dunnage and bracing. A charge assessed for labor and material used in blocking and bracing in rail cars and trucks; blocking and bracing are necessary to protect or prevent movement of raw agricultural products or household goods while in transit. This charge is separate from the storage charge and is related to transportation. Therefore, it is not subject to tax.

h. Extra labor. A charge assessed for other-than-normal handling, such as shipping or receiving, during other-than-usual business hours. This charge is predominantly related to transportation and, when separately listed from storage, is not subject to tax.

i. *Bonded custom charges.* A charge assessed in addition to regular rates for merchandise being held under United States Custom Bond. This is considered a tariff on foreign goods entering the country and is not subject to tax.

j. *Trash disposal.* See rule 701—26.71(422,423).

k. *Cartage.* A charge assessed for transporting raw agricultural products or household goods from the storage facility to the customer's place of business or residence, or from the customer's place of business or residence to the storage facility, or from one place of business to another, or from one residence to another. This is a transportation charge and is not subject to tax.

l. *Crating.* This is a charge for packing and wrapping. If predominantly related to storage, it is taxable; if it is predominantly related to transportation, it is exempt.

m. *Canning and bagging.* A charge assessed for receiving raw agricultural products or household goods in bulk, unloading, and placing in containers, such as bottles, bags, cans, or drums. If this service is predominantly related to storage, it is subject to tax. If this service is predominantly related to transportation, it is exempt from tax.

n. *Unpacking.* This would be predominantly related to storage and subject to tax, unless it can be shown to be predominantly related to transportation.

26.42(5) *Wrapping and packaging.*

a. Wrapping and packaging services performed on raw agricultural products or household goods are taxable or exempt, depending upon whether the predominant service is storage or transportation. *Iowa Movers and Warehousemen's Association* supra.

b. Wrapping, packing and packaging predominantly for storage of merchandise is subject to tax unless the interstate commerce exemption is applicable.

c. Warehouses which sell packing materials to their customers are considered retailers of these materials and should collect sales tax. When the packaging materials are not billed separately to the customer, the warehouse will be subject to the standards set forth in rule 701—18.31(422,423) regarding tangible personal property purchased for use in performing services.

26.42(6) *Transit warehouses.* The department recognizes that the operations of transit warehouses present some administrative difficulties in the collection of sales taxes. Raw agricultural products or household goods are shipped to transit warehouses in bulk quantities and shipped to different locations at different times. Storage of raw agricultural products or household goods delivered in Iowa would be subject to tax, while storage of raw agricultural products or household goods placed into interstate commerce would be exempt from tax. Since it is extremely difficult under these circumstances to determine the cost of storage on raw agricultural products or household goods delivered in Iowa, the department will allow transit warehouses to compute tax on storage fees on the basis of a formula, the numerator of which is the quantity of raw agricultural products or household goods stored in the warehouse with intrastate delivery in Iowa, and the denominator of which is the total quantity of goods stored in the warehouse. This information, in most cases, must be supplied by principals storing goods in the warehouse. However, it is the responsibility of the warehouse to acquire the information needed to compute the Iowa sales tax under the formula. This information should be verified with the principal at least once every 90 days. Included in the numerator of the formula will be raw agricultural products or household goods picked up at an Iowa warehouse by a principal or purchaser, or raw agricultural products or household goods delivered to a principal or purchaser in Iowa even though the principal or purchaser may subsequently deliver the raw agricultural products or household goods to a common carrier for shipment outside Iowa.

26.42(7) *Government storage.* Storage of raw agricultural products or household goods is exempt from tax if the storage contract is with a tax-certifying or tax-levying body of the state of Iowa or to any instrumentality of the state, county, or municipal government, or with the federal government or its instrumentalities. Storage fees relating to raw agricultural products or household goods placed in storage by the producer and later consigned to the federal government under a loan agreement are not exempt from tax. In order for the storage to be exempt from tax, the federal government must actually own the raw agricultural products or household goods during the period the goods are stored and make payment to the warehouse for the storage.

Also refer to *Iowa Movers and Warehousemen's Association v. Briggs,* Equity No. 75910, Polk County District Court, May 8, 1974, and 237 N.W.2d 759.

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

701—26.43(422) Telephone answering service. Persons engaged in the business of providing telephone answering service, whether by person or machine, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

A one-way paging service is not a taxable enumerated service in Iowa because a one-way pager only receives information and is not capable of transmitting information.

This rule is intended to implement Iowa Code section 422.43(11).

701—26.44(422) Test laboratories. Persons engaged in the business of providing laboratory testing of any substance for any experimental, scientific or commercial purpose, except for tests on humans, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. Included within the meaning of the phrase "test laboratories" are mobile testing laboratories and field testing by test laboratories. Test laboratory services performed on animals on or after July 1, 1991, are also exempt from tax.

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

[1]**701—26.45(422) Termite, bug, roach, and pest eradicators.** Persons engaged in the business of eradicating or preventing the infestation by termites, bugs, roaches, and all other living pests are rendering, furnishing, or performing a service, the gross receipts from which are subject to tax. Persons who eradicate, prevent, or control the infestation of any type of pest by spraying or other means are rendering, furnishing, or performing a service, the gross receipts from which are subject to tax. Included in the performance of this taxable service are persons who eradicate, prevent, or control pest infestations in farmhouses, in outbuildings (such as machine and livestock buildings) and in other structures (such as grain bins) used in agricultural production. However, persons who spray cropland used in agricultural production to eradicate or prevent infestation of the cropland by pests are performing a service which is not taxable. See 701—subrule 17.9(3) for a definition of "agricultural production."

[1] Effective date (7/8/98) delayed until July 16, 1998, by the Administrative Rules Review Committee at its meeting held June 9, 1998.

701—26.46(422) Tin and sheet metal repair. Persons engaged in the business of repairing tin or sheet metal, whether the same has or has not been formed into a finished product are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

701—26.47(422) Turkish baths, massage, and reducing salons. Persons engaged in the business of operating Turkish baths, reducing salons, or in the business of massaging, excluding services provided by massage therapists licensed under Iowa Code chapter 152C, are rendering, furnishing, or performing a service, the gross receipts from which are subject to tax. "Turkish baths" shall mean any type of facility wherein the individual is warmed by steam or dry heat. "Reducing salons" shall mean any type of establishment which offers facilities or a program of activities for the purpose of weight reduction. "Massaging" shall include the kneading, rubbing, or manipulating of the body to condition the body, but not include any body manipulation undertaken and incidental to the practice of one or more of the healing arts. Persons engaged in the business of operating health studios which, as a part of their operation, offer any or all of the services of Turkish baths, massages, or reducing facilities or programs shall be subject to tax upon the gross receipts from the above-named service.

This rule is intended to implement Iowa Code section 422.43(11) as amended by 1998 Iowa Acts, chapter 1163.

701—26.48(422) Vulcanizing, recapping or retreading. Prior to May 18, 1984, persons engaged in the business of recapping or retreading tires for any vehicle or vulcanizing any type of product for others are

rendering, furnishing or performing a service, the gross receipts from which are subject to tax. For the purposes of this rule, vulcanizing shall mean the act or process of treating crude rubbers, synthetic rubber, or other rubber-like material with a chemical and subjecting it to heat in order to increase its strength and elasticity. On and after May 18, 1984, the sale of vulcanizing, recapping or retreading is treated as a sale of tangible personal property. See rule 701—16.51(422,423) for the effects of this change and for certain changes in the treatment of vulcanizing, recapping or retreading for the period beginning January 1, 1979, and ending May 17, 1984.

701—26.49 Rescinded, effective 3/18/87.

701—26.50(422) Weighing. Persons engaged in the business of weighing any item of tangible personal property are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

701—26.51(422) Welding. Persons engaged in the business of welding materials whether for the purpose of mending existing articles, adding to them or creating new articles are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

701—26.52(422) Well drilling. Persons engaged in the business of well drilling who perform repair services are rendering a service, the gross receipts from which are subject to tax. Services within the ambit of subrule 26.2(1) are not subject to tax.

701—26.53(422) Wrapping, packing and packaging of merchandise other than processed meat, fish, fowl and vegetables. Persons engaged in the business of wrapping, packing and packaging of merchandise other than processed meat, fish, fowl and vegetables are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. If the person "wraps, packs or packages" merchandise as a service incidental to the sale of such merchandise and does not charge for the service, no sales or use tax, in addition to that paid on the purchase price of the merchandise, need be collected or remitted. However, if a separate charge be made for "wrapping, packing or packaging," the gross receipts therefrom are subject to tax.

701—26.54(422) Wrecking service. Persons engaged in the business of wrecking, tearing down, defacing or demolishing tangible personal or real property or any parts thereof are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

701—26.55(422) Wrecker and towing. Persons engaged in the business of towing any vehicle by means of pushing, pulling, carrying or freeing any vehicle from mud, snow or any other impediment, including hoisting incidental thereto, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. The gross receipts from service charges made when any person travels to any place to lift, extricate or tow any vehicle or to salvage any vehicle are subject to tax. Towing does not include transporting operable vehicles from one location to another where no operative aspect of such vehicle is integral to such transporting. The exemption for transportation services shall not apply.

26.55(1) *"Vehicle"* means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway. "Vehicle" does not include:

a. Any device moved by human power.

b. Any device used exclusively upon stationary rails or tracks.

c. Any steering axle, dolly, or other integral part of another vehicle, except an auxiliary axle as defined in 26.55(2) which in and of itself is incapable of commercially transporting any person or property but is used primarily to support another vehicle.

d. Any integral part of a truck tractor or road tractor which is mounted on the frame of the truck tractor or road tractor immediately behind the cab and which may be used to transport persons and property but which cannot be drawn upon the highway by the truck tractor or another motor vehicle.

26.55(2) *"Auxiliary axle"* means a transferable axle with pneumatic tires utilized to convert any single axle to a tandem axle, or to convert any semitrailer to a full trailer with four or more wheels and which may be registered as if a vehicle.

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

701—26.56(422) Cable and pay television. On and after July 1, 1990, persons engaged in the business of distributing the signals of one or more television broadcasting stations, or other television programming to subscribers, and using any transmission path, including a cable, for these signals are rendering the service of "pay television," the gross receipts of which are subject to tax. Thus, the gross receipts from a service broadcasting signals from a satellite directly to a customer's "satellite dish" or other receiving antenna would be taxable. Also taxable as the gross receipts from a "pay television service" would be the rental of any device used for decoding scrambled signals received from a communications satellite.

On and after July 1, 1985, and prior to July 1, 1990, the service of "cable television" only, rather than "pay television" was subject to tax. Thus, only if television programming was transmitted to subscribers by means of a cable during this five-year period were the gross receipts of that service subject to tax. A cable television service would include any facility using fiberoptics as a transmission path for its distribution of signals to its customers. Prior to July 1, 1990, the gross receipts of a company broadcasting signals from a satellite directly to a customer's "satellite dish" or other receiving antenna would not be subject to tax as the service of "cable television"; however, such a system could be a taxable "communication service." See rule 701—18.20(422). The gross receipts from the installation of cable television service, separately itemized and billed, are not subject to tax.

The following television services are taxable, in any event, on and after July 1, 1990. These services are also taxable on and after July 1, 1985, if transmitted to viewers by way of a cable: the gross receipts from payments to view single events, as well as subscription payments are subject to tax. Also subject to tax are the gross receipts from any television service serving fewer than 50 subscribers or serving only customers in one or more multiple unit dwellings under common ownership, control, or management. Any person distributing signals to television screens in auditoriums or other buildings which show boxing matches and other events for viewing by a paying audience is in the business of providing a television service. Gross receipts from providing these signals to exhibitors of boxing matches or other events are subject to tax.

See 701—subrule 18.5(3) and rule 701—18.39(422,423) for a description of the special circumstance regarding taxation and nontaxation of municipally owned pay television service.

See rule 701—18.43(422,423) for an exemption applicable to cable television only for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.57(422) Camera repair. The gross receipts from repair of any still photograph, motion picture, video, or television camera are subject to tax. Included within the term "camera repair" is the repair of any camera part which may be detached from the camera body but which can be used only with a camera and would ordinarily be considered a part of the camera. Nonexclusive examples of such accessories are: detachable lenses, flash units and motor drives.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.58(422) Campgrounds. On and after July 1, 1985, the gross receipts from "campgrounds" are subject to tax. A "campground" is any location at which sites are provided for persons to place their own temporary shelter, such as a tent, travel trailer or motor home. Excluded from this characterization of "campground" is any hunting, fishing or other type of camp at which accommodations are provided in cabins or other permanent structures. The gross receipts from the operation of these camps were taxable prior to July 1, 1985, and remain taxable after that date. See rule 701—18.40(422,423). The gross receipts from the use of a site at a campground are subject to tax even if rented by the same person for a period of more than 31 consecutive days.

Included within the meaning of "gross receipts" from the services of a campground are any mandatory or optional charges imposed on persons using a site on the campground. These include, but are not limited to, campground entry fees, electric, water and sewer fees, fees for the use of swimming pools or showers, and fees for the privilege of keeping extra persons or extra vehicles at the campsite. The gross receipts from the use of any state park as a campground are subject to tax. The gross receipts from the use of any county or municipal park as a campground are exempt from tax.

Excluded from this characterization of the gross receipts from a campground are any charges to persons who are not residing on a site at the campground and who are, therefore, not camping there. Charges to such persons for the use of picnic areas, swimming pools, hiking trails or hayrides are not the gross receipts from a campground, but are the gross receipts from "commercial recreation" which are subject to tax and were subject to tax prior to July 1, 1985. See rule 26.24(422). Fees charged which allow entry for a vehicle to any state, county or municipal park (commonly called "park user fees") shall not be subject to tax.

See rule 701—18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code subsection 423.43(11).

701—26.59(422) Gun repair. On and after July 1, 1985, the gross receipts from "gun repair" are subject to tax. The term "gun repair" means the repair of any pistol, revolver or other hand gun, as well as the repair of any shoulder or hip-fired gun such as a rifle or shotgun. See *State v. Christ,* 177 N.W. 54 (Iowa 1920).

See rule 701—18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.60(422) Janitorial and building maintenance or cleaning. On and after July 1, 1985, gross receipts from janitorial services and building maintenance and cleaning are subject to tax. "Janitorial services" means the type of cleaning services performed by a janitor in the regular course of duty, whether such services are performed individually, under separate contract, or are included within a general contract to perform a combination of such services. The term includes, but is not limited to, contracts to perform interior window washing, floor cleaning, vacuuming and waxing, the cleaning of interior walls and woodwork, and cleaning of restrooms and furnaces. Also included within the meaning of the term is the movement of furniture and other items of personal property within a building. Persons performing either one or a number of janitorial services are engaged in a business, the gross receipts of which are subject to tax. Therefore, for example, a person engaged only in cleaning the interior windows of a building is engaged in taxable janitorial services.

The gross receipts from services which would otherwise be considered "janitorial" services are not subject to tax if those services are performed in a private residence, including an apartment or multiple housing unit, and the person paying for the services is an occupant of the residence. Such services are more in the nature of "housekeeping" than "janitorial" services and are not taxable.

Cleaning of the exterior walls or windows of any building or any other act performed upon the exterior of a building with the intent to keep the building in good upkeep or condition, other than a repair, is the service of "building maintenance." Its gross receipts are subject to tax. Excluded from "building maintenance" is any service performed upon the exterior of a building which is a private residence and which is paid for by an occupant of the building.

Janitorial services or building maintenance performed on or in connection with new construction, reconstruction, alteration, expansion or remodeling of structure is exempt from tax. See rule 701—19.13(422,423).

See rule 701—18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.61(422) Lawn care. On or after July 1, 1985, persons engaged in the business of "lawn care" are performing a service, the gross receipts of which are subject to tax. "Lawn care" includes but is not limited to the following services: mowing, trimming, watering, fertilizing, reseeding, resodding, and

killing of insects, moles, other vermin, weeds, or fungi which may be threatening a lawn. Persons who mow lawns are providing a taxable service regardless of their ages.

See rule 701—18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

The term "lawn" is commonly defined as an "open space between woods or ground (as around a house or in a garden or park) that is covered with grass and is generally kept mowed" or required to be kept mowed. (Webster's New Collegiate Dictionary (1979).) Based on this general definition of "lawn," the following are nonexclusive examples of properties which would be subject to tax as "lawn care": cemetery grounds, golf courses, parks, and residential or commercial properties containing one or more buildings or structures. The mowing of grass within a ditch is not the taxable service of lawn care.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.62(422) Landscaping. On or after July 1, 1985, the gross receipts from the service of "landscaping" are subject to tax. The services performed by one who arranges and modifies the natural condition of a given parcel or tract of land so as to render the land suitable for public or private use or enjoyment is engaged in the business of "landscaping." Any services for which registration is required as a "landscape architect" under Iowa Code section 544B.2 are not subject to tax on the service of "landscaping" if performed by a registered landscape architect and separately stated and separately billed on a charge for landscape architecture. The gross receipts from landscaping performed on or in connection with new construction, reconstruction, alteration, expansion or remodeling of a building or structure shall not be subject to tax. See rule 701—19.13(422,423).

See rule 701—18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.63(422) Pet grooming. On or after July 1, 1985, persons engaged in the business of pet grooming are rendering a service, the gross receipts of which are subject to tax. A "pet" is any animal which has been tamed or gentled and which is kept by its owner for pleasure or affection rather than for utility or profit. "Grooming" consists of any act performed to maintain or improve the appearance of a pet and includes, but is not limited to, washing, combing, currying, hair cutting and nail clipping. Livestock are not pets, and the gross receipts from the grooming of livestock (e.g., to prepare those livestock for exhibition at fairs or shows) are nontaxable gross receipts. The gross receipts paid to any person who is not a veterinarian for the grooming of any dog (other than a Seeing Eye dog) or cat will be presumed to be the gross receipts from "pet grooming" and subject to tax.

If pet grooming is done for veterinary purposes, the sales tax does not apply since the grooming is an integral part of the nontaxable service of veterinary care. If pet grooming is done for both veterinary and cosmetic reasons, the primary purpose for the treatment will determine if sales tax should be collected. In situations where the charge for the cosmetic treatment and the veterinary-related treatment can be invoiced separately, sales tax should be collected only on the cosmetic portion of the billing. It will be presumed that pet grooming activities such as washing, trimming, and cutting are for cosmetic purposes unless it can be shown that the treatment was primarily done for veterinary purposes.

See rule 701—18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.64(422) Reflexology. On and after July 1, 1985, persons engaged in the business of reflexology are rendering a service, the gross receipts of which are subject to tax. "Reflexology" is a system for the treatment of illness which assumes that certain "reflex points" exist in the feet or hands and that each of these reflex points is related to the health of one organ or portion of the body. By massaging these reflex points, a "reflexologist" seeks to alleviate nervous tension, and by this alleviation to relieve arthritis, headaches, backaches, stiff necks and other ailments.

See rule 701—18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.65(422) Tanning beds and tanning salons. On or after July 1, 1985, persons engaged in the business of providing tanning beds and tanning salons are performing a service, the gross receipts of which are subject to tax.

See rule 701—18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.66(422) Tree trimming and removal. On or after July 1, 1985, persons engaged in the business of tree trimming and removal are performing a service, the gross receipts of which are subject to tax. Persons engaged in "stump removal" are engaged in a taxable service, as are persons engaged in the removal of any other portion of a tree, such as the branches or trunk. The trimming or removal of any shrub which has a woody main stem or trunk with branches shall constitute tree trimming or removal and the gross receipts from the trimming or removal of such a shrub shall be subject to tax. Persons engaged in the business of tree trimming and removal who cut the wood from the trees which they trim or remove into sizes suitable for sale as firewood and who sell this wood for firewood are engaged in the sale of tangible personal property, and the gross receipts from the sale of this wood are subject to tax. The services of persons who trim or remove trees and sell the wood which they have cut are not services sold for resale and are subject to tax.

See rule 701—18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.67(422) Water conditioning and softening. On and after July 1, 1985, persons engaged in the business of water conditioning and softening are performing a service, the gross receipts of which are subject to tax. "Water softening" means the removal of minerals from water to render it more suitable for drinking and washing. "Water conditioning" means any action other than water softening taken with respect to water which renders the water fit for its intended use or more healthful or enjoyable for human consumption. The phrase "water conditioning" includes but is not limited to water filtration, water purification, deionization and reverse osmosis. The service of water purification is taxable whether performed for residential, commercial, industrial, or agricultural users.

See rule 701—18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.68(422) Motor vehicle, recreational vehicle and recreational boat rental. On and after July 1, 1985, the gross receipts from the rental of certain motor vehicles subject to registration, which are registered for a gross weight of 13 tons or less, recreational vehicles and recreational boats are subject to tax.

26.68(1) *Use of vehicles and boats with drivers or operators.* For the purposes of this rule, if the services of a driver or operator are provided as part of the fee for the use of any vehicle or boat, no rental of the vehicle or boat has occurred. Even though the person using the vehicle or boat has the right to control the driver's or operator's movements, the gross receipts from use of the vehicle are not subject to tax as vehicle or boat rental. If the vehicle or boat is rented from one person and the services of the driver or operator rented from another, tax will apply.

26.68(2) *Rental of vehicles subject to registration.*

a. "Certain long-term" leases not subject to tax. The gross receipts from the leasing of any vehicle subject to registration for a gross weight of 13 tons or less are not subject to tax if the lease is a written agreement providing for the lease of the vehicle for more than 60 days and if the lessor, at the time of the signing of the lease, is licensed under Iowa Code chapter 321F. On or after January 1, 1997, a use tax shall be imposed on the lease price of certain motor vehicles leased for a period of 12 months or more. See rule 701—31.5(423).

b. Transactions subject to Iowa sales tax. A "rental" of tangible personal property, such as a vehicle subject to registration, occurs when one person transfers possession of tangible personal property to another person for temporary possession and use, pursuant to contract, *A.C. Nelsen Auto Sales v. Turner,* 44 N.W.2d 36 (Iowa 1950) and *Ballstadt v. Iowa Department of Revenue,* 368 N.W.2d

147 (Iowa 1985). Therefore, a "rental" of a vehicle has occurred in Iowa when, pursuant to a rental contract, possession of a vehicle is transferred to a customer in this state unless paragraph *"a"* of this subrule is applicable. The tax is collectible when any lump-sum or periodic payment is due under the rental agreement and paid in Iowa. Transfer of possession of the vehicle must have occurred in Iowa; the contract for rental of the vehicle need not have been executed here. Sales tax is payable on transfer to a customer upon possession of a rented vehicle in Iowa regardless of whether the vehicle is subsequently used exclusively in interstate commerce or not if payment by the customer is made in Iowa.

EXAMPLE 1. Customer A signs a rental contract with and takes possession of a rental car from an office of a rental agency located in Des Moines. Thereafter, A drives the car from Des Moines to Dubuque, Iowa, and back. In Des Moines, the rental agency collects gross receipts from the rental of $100. Such gross receipts would be subject to tax. If the customer had driven the rental car from Des Moines to Madison, Wisconsin, and back to Des Moines, the gross receipts would also be subject to tax.

EXAMPLE 2. Customer B enters into a contract to rent an automobile with a rental agency's office located in Omaha, Nebraska. B takes possession of the car rented under the contract at the rental agency's office in Council Bluffs, Iowa. B then drives the car from Council Bluffs to Dubuque and back. All gross receipts from the rental are subject to Iowa sales tax since delivery and payment occurred in Iowa.

EXAMPLE 3. Customer C enters into a contract to rent and takes possession of a rented automobile in Des Moines. Thereafter, C drives the vehicle to California and returns the vehicle to the rental agency's office in Los Angeles, and there pays a total charge for the rental of $300. No Iowa sales tax is due. Transfer of possession occurred here, but payment under the lease did not.

EXAMPLE 4. Customer D rents and takes possession of a truck in Des Moines. Before taking possession, D pays the rental agency a $500 deposit. Rental of the truck is on a mileage and per-day basis. Customer D drives the truck to Phoenix, Arizona. There it is discovered that the mileage and per-day charges add up to $600. Customer D pays the rental agency an additional $100 in Phoenix. Iowa sales tax is due upon the $500 deposit paid in Des Moines but not on the $100 paid in Phoenix. Only the payment made under the lease in Iowa is subject to tax.

EXAMPLE 5. Customer E rents a car in Chicago, Illinois, and drives it to Des Moines. In Des Moines E pays $200 for the use of the car. Although payment under the lease occurred in Iowa, transfer of possession of the vehicle did not take place here. This transaction is not subject to sales tax but may be subject to use tax; see rule 701—33.8(423).

26.68(3) *Tax collected from customer.* The person renting any vehicle subject to registration must collect from the customer and remit to the state of Iowa sales tax on each and every rental payment made in Iowa, no matter how calculated. Tax must be remitted for the period in which each rental payment is due and owing. Rental payments whether calculated in one lump sum, or on a mileage basis, or periodically are subject to tax. Also subject to tax are any charges, such as those for compulsory insurance, which are characterized as something other than rent payments but which are required to be paid as a condition of the rental. Specifically, but not exclusively excluded from the meaning of gross receipts from rental of a vehicle subject to registration are items such as optional collision damage waiver fees, optional personal accident insurance fees, and fuel. If these charges are not to be included as part of rentals, a charge must be separately stated, separately itemized, and the charge cannot be required as a condition of the rental.

Effective July 1, 2002, all airport-imposed fees charged to a customer for the rental of a vehicle are not subject to Iowa sales or use tax, if separately itemized.

26.68(4) *Recreational boats.* The term "recreational boats" includes, but is not limited to, sailboats, rowboats, motorboats, paddleboats, and canoes. The gross receipts from the sale of tickets on river steamboats carrying passengers for pleasure rides are not taxable as the gross receipts of "recreational boat" rental but are taxable as the gross receipts from an "amusement enterprise." See rule 701—16.32(422).

26.68(5) *Recreational vehicles.* The term "recreational vehicles" includes, but is not limited to, bicycles, go-carts, golf carts and horse-drawn wagons or carriages, if rented without a driver. Rental of a recreational vehicle that is a vehicle subject to registration is also subject to tax.

This rule is intended to implement Iowa Code sections 422.45 and 423.7A and section 516D.3(6) as amended by 2002 Iowa Acts, House File 2622, section 29.

701—26.69(422) Security and detective services. On or after July 1, 1985, persons engaged in the business of providing security or detective services are performing services, the gross receipts of which are subject to tax.

26.69(1) *Security service characterized.* Any person who provides a service, the purpose of which is to protect property from theft, vandalism or destruction or individuals from physical attack or harassment is providing a "security service." Persons engaged in the following services are providing a taxable security service. The list is not exclusive: rental of guard dogs, burglar and fire alarm systems; providing security guards, bodyguards and mobile patrols; and protection of computer systems against unauthorized penetration.

26.69(2) *Detective services characterized.* Persons engaged, for a consideration, in the service of investigation for the purpose of obtaining information regarding any one or more of the following matters are engaged in the business of providing a "detective service," and their gross receipts shall be subject to tax. Investigation of crimes or wrongs done or threatened; the habits, conduct, movements, whereabouts, associations, transactions, or reputation or character of any person; the credibility of witnesses or other persons; the investigation or recovery of lost or stolen property or the cause, origin, or responsibility for fires, accidents, or injuries to property; the investigation of the truth or falsity of any statement or representation; the detection of deception; or the business of securing evidence to be used before authorized investigating committees, boards of award or arbitration, or in the trial of civil or criminal cases. The services of a peace officer engaged privately in security or detection work are also subject to tax.

26.69(3) *Gross receipts not subject to tax.* Gross receipts from the following activities are not subject to tax as the gross receipts from security or detective services.

a. The services of a person employed full- or part-time by an employer in connection with the affairs of the employer.

b. The services of an attorney licensed to practice in Iowa, while performing duties as an attorney.

c. The services of a person engaged exclusively in the business of obtaining and furnishing information regarding the financial rating or standing and credit of any person.

d. The services of a person exclusively engaged, either as an employee or an independent contractor, in making investigations and adjustments for insurance companies.

e. The service of notice, or any other document, to a party, witness or any other person in connection with any criminal, civil or administrative litigation.

f. The service of soliciting any debtor to pay or collecting payment for any debt.

g. The service of securing information regarding the fitness or unfitness of any individual for prospective employment, if such information is secured by written or electronic communication only, e.g., checking of résumés.

h. Services as a consultant, who is rendering advice or providing training with regard to security and detection matters.

26.69(4) *Charges excluded from gross receipts.* Mileage and other travel expenses, lodging and meal expenses, fees paid for records, and amounts paid for information do not constitute a portion of the gross receipts from security or detective services if separately identified, separately billed and reasonable in amount.

See rule 701—18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.70(422,423) Lobbying. Rescinded IAB 11/14/01, effective 12/19/01.

701—26.71(422,423) Solid waste collection and disposal services.

26.71(1) *Definitions.*

a. *"Solid waste"* is garbage, refuse, or sludge from a water supply treatment plant or air contaminant treatment facility, and other discarded waste materials and sludges, in solid, semisolid, liquid, or contained gaseous form, resulting from nonresidential commercial operations, but does not include hazardous waste; animal waste used as fertilizer; earthen fill, boulders, rock; foundry sand used for daily cover at a sanitary landfill; sewage sludge; solid or dissolved material in domestic sewage or other common pollutants in water resources, such as silt, dissolved or suspended solids in industrial wastewater effluents or discharges which are point sources subject to permits under Section 402 of the federal Water Pollution Control Act, dissolved materials in irrigation return flows; or source, special nuclear, or by-product material defined by the federal Atomic Energy Act of 1954. On or after July 1, 1994, the term also excludes auto hulks, street sweepings, ash, construction debris, mining waste, trees, tires, lead acid batteries and used oil.

b. Rescinded IAB 10/12/94, effective 11/16/94.

c. *"Agricultural operations."* An agricultural operation is any enterprise engaged in the raising of crops or livestock for market on an acreage. Included within the meaning of the term are feed lots; operations growing and raising hybrid seed corn or other seed for sale to farmers; nurseries; ranches; orchards and dairies. Excluded from the meaning of the term are commercial greenhouses; logging; beekeeping; catfish raising operations; those engaged in the production of Christmas trees; and those raising nondomesticated animals, such as mink, or nondomesticated fowl. The above list of inclusions and exclusions from the term "agricultural operation" is not exhaustive.

d. *"Industrial operation."* A business is an "industrial operation" if its purchases or rentals of machinery or equipment are eligible for the Iowa sales and use tax exemption for industrial machinery and equipment. See Iowa Code subsection 422.45(27).

e. *"Mining operation."* A mining operation is one engaged in either underground mining, strip mining, or quarrying.

f. *"Nonresidential commercial operation."* Any operation which is an industrial, commercial, agricultural, or mining operation whether for profit or not. Included within the meaning of the term "nonresidential commercial operation" are hotels and motels. Excluded from the meaning of the term are apartment complexes, mobile home parks, or a single-family or multifamily dwelling. The word "commercial" is not to be understood in a narrow sense as referring only to a "for profit" operation, but in the broader sense of that word to refer to all organizations (for instance, churches, charities, and fraternal organizations) that are involved in the buying and selling of goods and services in the marketplace generally.

Examples of "nonresidential commercial operations" include the following: professional firms (doctors, lawyers, accountants, or dentists); restaurants; repair persons; persons selling and renting all sorts of tangible personal property; persons selling insurance of all kinds; appraisers; the skilled trades (e.g., plumbers, carpenters, and electricians); construction contractors; banks and savings and loans; barbers and beauticians; day care centers; counseling services; employment agencies; janitorial services; landscapers; painters; pest control; photography; printing; realtors; storage services; the United Way; the American Cancer Society; the Elks and Masons; churches, synagogues, and mosques; and not-for-profit hospitals which are not licensed under Iowa Code chapter 135B. This term does not include not-for-profit hospitals which meet the criteria of Iowa Code section 422.45(54). These examples are not exclusive.

26.71(2) *Tax imposed.* On and after April 1, 1992, gross receipts from the sale, furnishing, or service of solid waste collection and disposal are taxable.

Date of billing controls imposition of tax. Gross receipts from the sale, furnishing, or service of solid waste collection and disposal are subject to the Iowa sales tax if the date for the retailer's billing of a customer falls on or after April 1, 1992. If a bill itself contains no billing date, the date of billing is the billing date set out in the retailer's books and records. If a retailer's books and records contain no billing date and the bill is sent by mail, the date of the bill is the postmark on the letter containing it.

26.71(3) *Retailers obligated to collect the tax.* Counties and municipalities which provide the service of solid waste collection and disposal to nonresidential commercial operations are obligated to collect Iowa sales tax upon the gross receipts from the provision of those services. A city or county providing the service of solid waste disposal is a "retailer" obligated to collect tax from these operations.

Any person who has contracted to provide solid waste collection and disposal service to a city or municipality is obligated to collect tax upon the gross receipts from that service performed for the city or county on behalf of nonresident commercial operations located within the city or county.

EXAMPLE: City D contracts with ABC Disposal Service for ABC to provide solid waste removal to persons within the boundaries of City D. In return for this service, City D pays ABC Disposal Service $2 million per year. Some of the persons for whom ABC collects and disposes of solid waste are retail sales businesses, another is a manufacturing plant, another an apartment building, others are a quarry and turkey raising operation located within the city limits; finally, a number of persons whose garbage is collected by ABC are residents who own or rent their homes. ABC must collect tax from City D upon that portion of its business which is attributable to the service of solid waste collection and disposal which ABC provides to the city on behalf of the nonresident commercial operations located within City D. See subrule 26.71(4) for suggestions concerning formulas which ABC might use to compute the amount of tax which it is obligated to collect from City D.

26.71(4) *Retailers who provide both taxable and nontaxable solid waste collection and disposal service.* A retailer who is paid in one lump sum by a customer for providing both taxable and nontaxable solid waste collection and disposal service may, depending upon circumstances, collect tax upon all, none, or some of the proceeds collected from the customer. A retailer must collect tax upon all proceeds from a customer if nontaxable services rendered are only incidental to the retailer's taxable services. If taxable services rendered are incidental to nontaxable services rendered, then a retailer need not collect tax upon any of its receipts from a customer. If a substantial portion of the service which a retailer performs is taxable and a substantial portion of the service which it performs is nontaxable, then the retailer must collect tax upon that portion of its proceeds which reflects its taxable service and exclude from tax that portion of its proceeds derived from its nontaxable service.

A retailer may, after filing a petition with and securing the approval of the department, use a formula to determine the amount of taxable and nontaxable services which it performs for any one customer. This formula can then be utilized to calculate the retailer's taxable gross receipts.

EXAMPLE: ABC Disposal Service is providing solid waste disposal service to Company D. Company D owns 100 residential apartment units and a building containing 20 office suites. Under the contract between ABC and Company D, in return for collecting Company D's garbage, ABC bills Company D $750 per month. Part of this billing is, of course, for the nontaxable service of garbage collection from the residential apartment units and part for the taxable service of collecting garbage from the office building. In this instance, the ideal method of separating taxable gross receipts from nontaxable proceeds would be by a formula. A possible formula would be by weight. Assume that 1000 pounds of garbage per month is collected from the apartment building and 500 pounds from the office building. In this case, taxable gross receipts would be computed as follows:

$$\frac{500}{1000 + 500} = 1/3 = \text{Percentage of garbage collected from the taxable office building.}$$

$$750 \times 1/3 = 250 = \text{Taxable gross receipts from the \$750 proceeds.}$$

Other possible bases for a formula include number of units of taxable and exempt operations or number of square feet of taxable and exempt operations if these reasonably reflect the amount of taxable and exempt service performed for any one customer. The department will approve any formula which realistically reflects the amount of taxable and nontaxable work performed for a single customer and paid in one lump sum. Any petition for use of a formula must contain an adequate description of the

petitioner's operation, the formula which will be applied to it and why this formula accurately reflects the taxable and nontaxable work performed by the petitioner.

26.71(5) *Tax imposed upon disposal charges or tipping fees.* Persons who transport solid waste generated by the transporter or who transport, without compensation, solid waste generated by another person shall pay the tax set out in this rule at the collection or disposal facility to which the waste is transported. The gross receipts shall be based upon the disposal charge or tipping fee imposed by the facility. Also, the amount of any disposal charge or tipping fee imposed as a part of the service of collecting and managing recyclable materials separated from solid waste by the waste generator is excluded from the gross receipts of the tax set out in this subrule.

EXAMPLE: John's Quick Lube hauls its own solid waste to the local landfill. There, once a week, John's Quick Lube pays $50 to dump all the solid waste which it generates into the landfill, except for the used motor oil which it collects from its customers. John's Quick Lube pays the landfill operator another $50 per week to collect this used oil and send it on to a different location for recycling into new products. In this case, John's Quick Lube is obligated to pay sales tax upon the $50 disposal fee charged for the solid waste which enters the landfill. However, exempted from tax is the $50 paid to the landfill operator to store and pass on the used motor oil. In addition to used motor oil, "recyclable materials" means materials such as paper, glass, metals (e.g., copper, aluminum and iron), and batteries, so long as these materials are separated from other solid waste for the purpose of recycling.

26.71(6) *Exemption for a "recycling facility."* The gross receipts from the service of solid waste collection and disposal provided to a recycling facility which separates or processes recyclable materials and, as a result of that separation or processing, reduces the volume of the waste collected by at least 85 percent are exempt from tax if the waste is collected and disposed of separately from other solid waste. "Recycling facilities" are those facilities where recyclable materials are separated or processed for the purpose of reusing the materials in their original form or using them in manufacturing processes that do not cause the destruction of the recyclable materials in a manner that precludes further use. Because of this, facilities that separate or process recyclable materials for use as fuel are not eligible for this exemption. An example of a qualifying recycling facility is a facility which produces insulation from used glass.

This rule is intended to implement Iowa Code section 422.43.

701—26.72(422,423) Sewage services.

26.72(1) *Definitions.*

a. *"Sewage service"* is the service of collecting rainwater and other liquid and solid refuse or excreta for drainage or purification by means of pipes, channels, or conduits usually placed underground.

b. *"Agricultural operations."* This phrase has the meaning ascribed to it in 26.71(1)*"c."*

c. *"Industrial operations"* has the meaning ascribed to it in 26.71(1)*"d."*

d. *"Mining operation."* This term has the meaning ascribed to it in 26.71(1)*"e."*

e. *"Nonresidential commercial operation."* This phrase has the meaning ascribed to it in 26.71(1)*"f."*

26.72(2) *Tax imposed.* On and after April 1, 1992, gross receipts from the sale, furnishing, or service of sewage service provided to nonresidential commercial operations are taxable.

The date of billing controls the imposition of the tax. Gross receipts from sewage service are subject to Iowa sales tax if the date for the service provider's billing of a customer falls on or after April 1, 1992. If a bill itself has no billing date, the date of billing is the date set out in the provider's books and records. If a provider's books and records contain no billing date and the bill is sent by mail, the date of the bill is the postmark on the letter containing the bill.

26.72(3) *Retailers obligated to collect the tax.* Counties, municipalities, sanitary districts, or any other persons which provide sewage service to nonresidential commercial operations are obligated to collect Iowa sales tax upon the gross receipts from the rendering, furnishing, or performing of sewage services to those operations.

Any person who has contracted to provide sewage services to a county or municipality is obligated to collect tax upon the gross receipts from those services performed for the city or county on behalf of nonresident commercial operations located within the city or county.

See subrule 26.71(4) for an explanation of how a retailer who is providing taxable and nontaxable service to the same customer for one lump sum ought to treat the proceeds of such a transaction.

This rule is intended to implement Iowa Code section 422.43.

701—26.73(422,423) Consultant services. Rescinded IAB 6/24/92.

701—26.74(422,423) Aircraft rental. On or after April 1, 1992, the total gross receipts for rental of aircraft are subject to sales and use tax if the rental is for a period of 60 days or less. For purposes of this rule, "aircraft" means the same as the definition in Iowa Code section 328.1, subsection 4, a drone aircraft or aircraft transporting only the pilot.

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

701—26.75(422,423) Sign construction and installation. On or after April 1, 1992, the total gross receipts for the construction and installation of signs are subject to sales and use tax. For purposes of this rule, "sign" means notices erected and maintained for the purpose of providing information, notices, markers, advertising of products or services. A sign includes, but is not limited to, billboards, indoor or outdoor sign devices, and any structure erected and maintained for the purpose of conveying information.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.76(422,423) Swimming pool cleaning and maintenance. On or after April 1, 1992, the total gross receipts for the cleaning and maintenance of a swimming pool are subject to sales and use tax.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.77(422,423) Taxidermy. On or after April 1, 1992, the total gross receipts for the service of taxidermy are subject to sales and use tax. For purposes of this rule, "taxidermy" means the art or operation of preparing, stuffing, or mounting the skin, head, carcass, or part of a carcass of a dead animal.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.78(422,423) Mini-storage. On or after April 1, 1992, the total gross receipts from mini-storage are subject to sales and use tax. For purposes of this rule, "mini-storage" means a commercial operation that provides individual storage units of various sizes to persons for the purpose of storing tangible personal property. In some instances mini-storage facilities are fenced and the individual units have an alarm system. Persons leasing individual units generally provide their own security lock and they have sole access to the unit. Mini-storage also includes a secured area in which vehicles, boats, recreational vehicles, and camping trailers and other types of tangible personal property are stored. Mini-storage does not include storage lockers or storage units at apartment complexes for the primary convenience of the tenant. Mini-storage space is not a warehouse. See 26.42(1)*"b"* for provisions on storage of raw agricultural products and household goods.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.79(422,423) Dating services. On and after April 1, 1992, the gross receipts from the service of providing an opportunity for two individuals to meet and interact socially with the possibility of forming a relationship are subject to tax. By way of nonexclusive example: "Dating services" include the services of those who provide an opportunity for individuals to describe themselves to and meet potential partners through videotapes and 900 numbers. Also included within the meaning of the term are escort services. Excluded from the definition of "dating services" are the services of marriage matchmakers, telephone 900 numbers which provide an opportunity only for conversation as opposed to face-to-face meetings, or newspaper and magazine advertisement soliciting for companionship.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.80(422,423) Limousine service. On and after April 1, 1992, the gross receipts from the rendering, furnishing, or performing of a limousine service are subject to Iowa sales tax. A limousine service is one which provides a large or luxurious automobile with a driver by prearrangement. A limousine driver does not cruise the streets soliciting or accepting business, so a taxi service is not a limousine service. Charges for a limousine driver, whether billed as a part of or separate from the charges for a limousine, are taxable.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.81(422) Sales of bundled services contracts. The gross receipts from sales of bundled services contracts are subject to Iowa sales tax. For purposes of this rule, a "bundled services contract" means an agreement providing for a retailer's performance of services, one or more of which is a taxable service enumerated in Iowa Code section 422.43 and one or more of which is nontaxable or exempt, in return for a consumer's or user's single payment for the performance of the services, with no separate statement to the consumer or user of what portion of that payment is attributable to any one service which is a part of the contract. If that portion of a consumer's payment for a bundled services contract which is attributable to the performance of a taxable service or services can be segregated by contract or otherwise from that portion of the payment which is attributable to the performance of a service or services which are not taxable, then only that portion of the payment which is attributable to the performance of a taxable service or services is subject to tax.

EXAMPLE 1. Company A provides a bundled services contract which provides the following services to consumers: Internet access, interstate long distance service, intrastate long distance service, local telephone service, cable television service, and computer rental. Gross receipts from the performance of Internet access and interstate long distance services are not taxed under Iowa law. Gross receipts from the performance of the other four services are taxable. Company A offers, in six separate contracts, each service individually to customers for the price of $25 per month. Company A's monthly charge for its bundled services contract is $150. Fifty dollars of the monthly charge for the bundled services contract, that portion which represents Internet access and interstate long distance services, is excluded from tax. One hundred dollars, that portion of the monthly charge representing the taxable services of intrastate and local telephone service, cable television and computer rental, is taxable.

EXAMPLE 2. Company B offers a contract for the bundled services of long distance telephone service (interstate and intrastate), local telephone service, and Internet access service. Its monthly charge for these bundled services is $80. The bundled services contract is the only service contract which Company B offers, and there is nothing else in Company B's notice to the customer to indicate how much of the monthly service charge is attributable to taxable services and how much is attributable to services which are not taxable. Under these circumstances, the entire amount of $80 is subject to tax.

As of July 1, 2001, for purposes of the administration of the tax on bundled services contracts, the director of the department may enter into agreements of limited duration with individual retailers, groups of retailers, or organizations representing retailers of bundled services contracts. Once approved, such an agreement shall impose the tax rate only upon that portion of the gross receipts from a bundled services contract which is attributable to taxable services provided under the contract.

This rule is intended to implement Iowa Code Supplement section 422.43.

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◊ Two or more ARCs

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CHAPTER 27
AUTOMOBILE RENTAL EXCISE TAX

701—27.1(422,422C,423) Definitions and characterizations. For the purposes of this chapter, the following definitions and characterizations of words apply.

"Automobile" means a motor vehicle subject to registration in any state and designed primarily for carrying nine or fewer passengers. Excluded from the meaning of the term "automobile" are delivery trucks designed primarily to carry cargo rather than passengers and motorcycles and motorized bicycles.

"Lessor" is a person engaged in the business of renting automobiles to users. Included within the meaning of the term "lessor" are motor vehicle dealers licensed under Iowa Code chapter 322 to sell new and used automobiles who also rent automobiles to users. A person need not be engaged in a profit-making enterprise to be in the business of renting automobiles.

"Rental" is a transfer of possession or right of possession to an automobile to a user for a valuable consideration for a period of 60 days or less.

"Rental price" means the total amount of consideration valued in money for renting an automobile.

"User" is any person to whom possession or right of possession of an automobile is transferred for a valuable consideration for a period of 60 or fewer days.

701—27.2(422,422C,423) Tax imposed upon rental of automobiles. On and after July 1, 1992, a tax at the rate of 5 percent is imposed on the rental price of any automobile if the rental transaction is taxed under Iowa sales or Iowa use tax law. The tax imposed is in addition to the Iowa state sales or use tax.

See rule 701—26.68(422) for a description of automobile rentals which are subject to Iowa sales tax and rule 701—33.8(423) for a description of automobile rentals which are subject to Iowa use tax. These rules should be used with care since they involve vehicles other than an "automobile" as that word is defined for the purpose of this chapter. For instance, rule 701—26.68(422) is concerned with boats and recreational vehicles as well as automobiles and other vehicles subject to registration. Summarizing the essential content of those rules regarding automobiles:

27.2(1) Sales tax is due on the rental price of the "rental" of an automobile if possession or the right to possession of the automobile is transferred, under a rental contract, in Iowa.

27.2(2) Use tax is due on the rental price if an automobile is rented outside Iowa, used in Iowa under the rental contract, and payment of the rental price is made in Iowa at the termination of the rental agreement.

701—27.3(422,422C,423) Lessor's obligation to collect tax. The lessor shall collect this automobile rental excise tax from the user or from any other person paying the rental price for an automobile. The lessor shall collect the tax by adding the tax to the rental price of the automobile. When collected, the tax shall be stated on any billing or invoice as a distinct item separate and apart from the rental price of the automobile and separate and apart from any state or local option sales or service tax or any state use tax.

701—27.4(422,422C,423) Administration of tax. The excise tax on automobile rental is levied in addition to the state sales and use taxes imposed by Iowa Code chapters 422 and 423. The director of revenue is required to administer this excise tax on motor vehicle rental as nearly as possible in the fashion in which the state sales tax is administered. However, as an exception to this requirement, the director is to require only the filing of quarterly reports for motor vehicle excise tax. Quarterly, the correct amount of tax collected and due shall accompany the tax form prescribed by the department. No permit, other than an Iowa sales or use tax permit, will be required to collect the tax imposed under this chapter. However, the director may require all persons responsible for collecting and remitting motor vehicle rental excise tax to register with the department. For other aspects concerning the details of administering the tax imposed under this chapter see 701—Chapters 10, 11, 12, 13 and 14.

These rules are intended to implement Iowa Code chapters 422C and 423.

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TITLE IV
USE

CHAPTER 28
DEFINITIONS

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

701—28.1(423) Taxable use defined. A "taxable use" is the exercise of any right of ownership over tangible personal property in Iowa by any person owning the property but does not include the right to sell the property in the regular course of business or the right to process or manufacture the property into another article of tangible personal property intended to be sold ultimately at retail.

A taxable use is also an enumerated taxable service rendered, furnished or performed for use in Iowa or the product or result of such enumerated service used in Iowa. For list of enumerated services and exemptions from tax, see 701—Chapter 26.

Laws governing the return of defective vehicles by a purchaser, commonly known as "lemon laws," are found in Iowa Code chapter 322G. Under Iowa Code chapter 322G, the return of a qualifying defective vehicle to a manufacturer is not a taxable "use." Consequently, the transfer of the vehicle from a purchaser to a manufacturer pursuant to Iowa Code chapter 322G and the titling and registration of that vehicle by the manufacturer are not subject to Iowa use tax. For refund of use tax paid by a purchaser of a vehicle that is returned under Iowa Code chapter 322G, see 701—34.3(423).

701—28.2(423) Processing of property defined. "Processing of property" is defined to include:

28.2(1) Personal property which forms an integral or component part of the manufactured product which is intended to be sold ultimately at retail.

28.2(2) Property which is consumed as fuel in creating power, heat or steam for processing, including grain drying or generating electric current, or consumed in implements of husbandry engaged in agricultural production.

28.2(3) Property consisting of chemicals, solvents, sorbents or reagents which are directly used, consumed or dissipated in processing personal property which is intended to be sold ultimately at retail, even though such property does not become a component or integral part of the finished product. This ordinarily does not include any item of machinery, tools or equipment.

701—28.3(423) Purchase price defined. "Purchase price" means the total amount for which tangible personal property is sold, valued in money, whether paid in money or otherwise, provided that cash discounts and trade-in allowances allowed and taken on sales or purchases shall not be included.

701—28.4(423) Retailer maintaining a place of business in this state defined. "Retailer maintaining a place of business in this state" or any term similar to it 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 Iowa Code chapter 490. On and after July 1, 2001, the term also includes any retailer having or maintaining tangible personal property located in Iowa and leased to a lessee of the retailer. The tax is applicable to any lease payments due on or after that date.

This rule is intended to implement Iowa Code subsection 423.1(10) as amended by 2001 Iowa Acts, House File 736.

These rules are intended to implement Iowa Code chapter 423.

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CHAPTER 29
CERTIFICATES
[Prior to 12/17/86, Revenue Department[730]]

701—29.1(423) Certificate of registration. A retailer located outside the state who maintains a place of business in this state shall apply to the department for a certificate of registration to collect use tax. [See 701—30.1(423).] Each certificate of registration issued shall be assigned an individual number which shall appear immediately above the registrant's name on the certificate. When invoicing the purchase for use in Iowa, the holder of the certificate shall bill the use tax due as a separate item on the billing or invoice and indicate the registration number.

29.1(1) An application for a certificate of registration for a retailer located outside the state shall show the following:

a. Business identification name of the person to whom the certificate is to be issued.

b. Address of the location from which the use tax returns are to be filed.

c. Names and addresses of all officers, in the case of a corporation; the names of all partners, in the case of a partnership; the name of the owner, in the case of an individual ownership.

d. Date when the applicant, as a retailer maintaining a place of business in this state, will begin or has begun selling tangible personal property or rendering, furnishing or performing of enumerated taxable services in Iowa or for use in Iowa subject to use tax law.

e. Names and addresses of all offices, warehouses or other places of business in Iowa, either owned or controlled by the applicant or its subsidiary.

f. Names and addresses of all agents of the applicant operating in the state either permanently or temporarily.

g. Names and addresses of all out-of-state locations from which tangible personal property will be delivered in Iowa for use in Iowa and from which billing for the merchandise will be made.

h. Any other information the department may require.

It shall not be necessary for more than one certificate to be held in order to collect and remit all use tax due, even though shipments and billings may be made from several out-of-state locations.

29.1(2) Reserved.

701—29.2(423) Cancellation of certificate of registration. When the holder of a certificate of registration ceases to sell tangible personal property for use in Iowa, the holder shall immediately notify the department and request cancellation of the certificate of registration.

701—29.3(423) Certificates of resale, direct pay permits, or processing. When tangible personal property or service is sold in interstate commerce for delivery in Iowa, it shall be presumed that such property or service is sold for use in Iowa. The registered seller is required to collect use tax from the purchaser. If the tangible personal property or service sold for delivery in Iowa is not sold for use in Iowa and is not subject to use tax, the seller shall be required to secure a properly written certificate from the purchaser showing the exempt use to be made of the property or service. A seller may also take a valid exemption certificate and not collect use tax from a purchaser if the purchaser pays tax on the purchase directly to the department pursuant to a valid direct pay permit issued by the department.

When the registered seller repeatedly sells the same type of property or service to the same Iowa customer for resale or processing, the seller may, at the seller's risk, accept a blanket certificate covering more than one transaction. For more information regarding exemption certificates and direct pay permits, see rules 701—12.3(422) and 15.3(422,423), respectively.

Suggested forms of certificate may be obtained from the department upon request.

These rules are intended to implement Iowa Code section 422.53 as amended by 1997 Iowa Acts, House File 266, and Iowa Code chapter 423.

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CHAPTER 30
FILING RETURNS, PAYMENT OF TAX, PENALTY AND INTEREST
[Prior to 12/17/86, Revenue Department[730]]

701—30.1(423) Liability for use tax and denial and revocation of permit.

30.1(1) Collection responsibility is placed upon all interstate sellers who sell tangible personal property or taxable services for use in Iowa, provided the seller maintains directly or by a subsidiary, an office, distribution house, sale house, warehouse, or other place of business or any representative operating within the state either permanently or temporarily. The term "representative" includes, but is not limited to, agent, employee, and an independent contractor. The seller is required to apply for and hold a certificate of registration and file a retailer's use tax return. The registered seller shall bill the Iowa customer, show tax as a separate item on the invoice, and indicate thereon the seller's registration number.

Generally, the following nonexclusive factual situations would constitute sufficient nexus for the state of Iowa to require an out-of-state vendor to collect Iowa use tax:

a. Out-of-state retailer owns or maintains within Iowa, either directly or by subsidiary, an office, distribution house, warehouse or other place of business.

b. Out-of-state retailer has a representative located in Iowa permanently or temporarily.

1. A representative solicits sales in Iowa as an employee of the retailer.

2. A representative solicits sales in Iowa as an independent broker, or jobber who is under contract with the vendor.

3. A representative acts as a consultant on behalf of a vendor and, while not taking orders, provides regular and significant services to a customer or customers in Iowa.

c. Out-of-state retailer installs in Iowa property it sells.

d. Out-of-state retailer is a construction contractor performing a contract, in whole or in part, in Iowa.

e. Out-of-state retailer performs service work in Iowa.

f. Out-of-state retailer regularly engages in delivery of its products by its own trucks in the state of Iowa.

Nelson v. Sears, Roebuck & Company, 312 U.S. 359 (1941); *General Trading Company v. State Tax Commission of the State of Iowa,* 322 U.S. 335 (1944); *Scripto v. Carson,* 362 U.S. 207 (1960); *National Geographic Society v. California Board of Equalization,* 430 U.S. 551 (1977); In Re: *Webber Furniture,* 290 N.W.2d 865 (S.D. 1980); *Standard Pressed Steel Company v. State of Washington Department of Revenue,* 419 U.S. 560 (1975).

30.1(2) The purchaser for use in this state shall pay tax to the seller, if the seller is registered with the department to collect use tax for the state. If the seller is not registered with the department to collect use tax for the state, the purchaser shall remit the tax directly to the department. A purchaser who possesses a valid direct pay permit issued by the department does not remit tax to the seller. Instead, the purchaser remits tax directly to the department. For further details regarding direct pay permits see rule 701—12.3(422).

30.1(3) The department may deny a permit to collect use tax to any applicant who is, at the time of application, substantially delinquent in paying any tax due which is administered by the department or the interest or penalty on the tax. If the applicant is a partnership, the department may deny the applicant a permit if a partner is substantially delinquent in paying any tax, penalty, or interest regardless of whether the tax is in any way a liability of or associated with the partnership. If an applicant for a permit is a corporation, the department may deny the applicant a permit if any officer, with a substantial legal or equitable interest in the ownership of the corporation, owes any delinquent tax, penalty, or interest of the applicant corporation. In this latter instance, the corporation must, initially, owe the delinquent tax, penalty, or interest and the officer must be personally and secondarily liable for the tax. This is in contrast to the situation regarding a partnership. See rule 701—13.16(422) for characterizations of the terms "tax administered by the department" and "substantially delinquent" in paying a tax. This subrule is applicable to tax, interest, and penalty due and payable on and after January 1, 1987.

The department will deny a permit to any applicant who is an individual if the department has received a certificate of noncompliance from the child support recovery unit in regard to the individual, until the unit furnishes the department with a withdrawal of the certificate of noncompliance.

30.1(4) The department may revoke the permit of any permit holder who becomes substantially delinquent in paying any tax which is administered by the department or the interest or penalty on the tax. If the permit holder is a corporation, the department may revoke the permit if any corporate officer with a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax, penalty, or interest of the applicant corporation. In this latter instance, the permit-holding corporation must, initially, owe the delinquent tax, penalty, or interest and the officer must be personally and secondarily liable for the tax. A permit may not be revoked if the permit holder is a partnership and a partner is substantially delinquent in paying tax, penalty, or interest which is not a liability of the partnership. This is in contrast to the situation regarding an application for a permit. See the preceding subrule. Also, see rule 701—13.16(422) for characterizations of the terms "tax administered by the department" and "substantially delinquent" in paying a tax. This subrule is applicable to tax, interest, and penalty due and payable on and after January 1, 1987.

The department will revoke the permit of an individual permit holder if the department has received a certificate of noncompliance from the child support recovery unit in regard to the individual, unless the unit furnishes the department with a withdrawal of the certificate of noncompliance.

This rule is intended to implement Iowa Code section 422.53 as amended by 1997 Iowa Acts, House File 266, and Iowa Code sections 423.6, 423.9, 423.10, and 423.14.

701—30.2(423) Measure of use tax. The current rate of tax shall be applied to the purchase price of:

30.2(1) Tangible personal property, less the amount of tangible personal property traded in on the purchase.

30.2(2) The use in Iowa of the product or result of enumerated services obtained outside this state or the use in Iowa of enumerated services rendered, furnished or performed in Iowa.

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

701—30.3(421,423) Consumer's use tax return. A person purchasing tangible personal property or taxable service from an out-of-state source for use in Iowa subject to the use tax law shall be liable for the payment of use tax. The person shall be required to file a consumer's use tax return with the department, reporting and remitting use tax on all property or taxable service purchased for use in Iowa during the quarterly period covered by the return, unless the seller from whom the purchase is made is registered with the department and has collected use tax on the purchase. For consumer's use tax due and unpaid on and after July 1, 1990, corporate officer and partner liability and the "good faith" exception for successor liability shall be applicable. See department rules 701—12.14(422B) and 701—12.15(422,423) for a detailed explanation of immediate successor liability and corporate and partner liability, respectively.

A person purchasing tangible personal property or a taxable service in only one quarter during the year may request, and the director may grant, permission to file and remit use tax for only that specific quarter.

If it is expected that the total annual tax liability of a consumer will not exceed $120 for a calendar year, the consumer may request, and the director may grant, permission to file and remit use tax on a calendar year basis. The return and tax will be due and payable no later than January 31 following each calendar year.

This rule is intended to implement Iowa Code sections 421.26, 421.28, and 423.14.

701—30.4(423) Retailer's use tax return. Every retailer collecting or owing more than $1500 in tax in any one month shall make a monthly deposit with the department. The deposit is due by the twentieth of the month following the month in which the tax is collected and applies only to the first two months of the quarter. The monthly deposit requirement is effective April 1, 1982.

A seasonal business retailer with gross receipts in only one quarter during the year may request, and the director may grant, permission to file and remit use tax for only that specific quarter in which the retailer conducted business.

If it is expected that the total annual tax liability of a retailer will not exceed $120 for a calendar year, the retailer may request, and the director may grant, permission to file and remit sales tax on a calendar year basis. The return and tax will be due and payable no later than January 31 following each calendar year in which the retailer carried on business.

A retailer's use tax return form shall be furnished by the department to each holder of a certificate of registration at the close of each quarterly period for use in reporting and remitting use tax due for the preceding quarterly period. The quarterly periods for the year end respectively on March 31, June 30, September 30 and December 31. One month shall be allowed immediately following the quarterly period in which to file returns and remit tax without becoming delinquent, unless the department shall otherwise provide.

On the quarterly return, every retailer shall report the gross sales for the entire quarter, listing allowable deductions and figuring tax for the entire quarter. Space is provided on the return for a deduction of tax deposited the first and second months of the quarter.

When the due date falls on Saturday, Sunday, or a legal holiday, the monthly deposit or return will be due the first business day following such Saturday, Sunday, or legal holiday. If a deposit or return is placed in the mails, properly addressed and postage paid, and postmarked on or before the due date for filing, no penalty will attach should the return not be received until after that date. Mailed returns should be addressed to Sales/Use Tax Processing, P.O. Box 10412, Des Moines, Iowa 50306.

30.4(1) If the certificate holder uses or consumes tangible personal property in the state of Iowa subject to the use tax law, the cost of such purchases made during a given monthly or quarterly period shall also be included on the retailer's use tax return.

30.4(2) If the certificate holder delivers property or products that result from more than one out-of-state location for use in Iowa and from which separate billings are made, a supplement to the return shall also be filed showing the amount of taxable sales made for each respective location.

30.4(3) Determination of filing status. Iowa Code section 423.13 provides, based on the amount of tax collected, how often certificate holders file deposits or returns with the department.

The department will determine if the certificate holder's current filing status is correct by reviewing the most recent four quarters of the certificate holder's filing history.

The following criteria will be used by the department to determine if a change in filing status is warranted.

Filing Status	Statutory Requirement	Test Criteria
Monthly	$1,500 in tax per month.	Tax in 3 of most recent 4 quarters exceeds $4,500.
Seasonal		Retailer remits tax for only one quarter during the previous calendar year and requests filing for one quarter only.
Annual	$120 or less in tax in prior year.	Retailer remits $120 or less in tax, for last 4 quarters and requests annual filing.
Quarterly	All other filers.	

When it is determined that a certificate holder's filing status is to be changed, the certificate holder will be notified and will be given 30 days to provide the department with a written request to prevent the change.

Certificate holders may request that they be allowed to file less frequently than the filing status selected by the department but exceptions will only be granted in two instances:

1. Incorrect historical data is used in the conversion. A business may meet the criteria based on information available to the computer, but upon investigation, the filing history may prove that the

business does not meet the dollar criteria because of adjustments, amended returns, or requests for refunds.

2. Data available may have been distorted by the fact that it reflected an unusual pattern in tax collection. The factors causing such a distortion must be documented and approved by the taxpayer services section.

Exceptions will not be granted in instances where the certificate holder's request is based on a decline in business activity, reduction in employees or other potentially temporary business action which will affect current and future reporting.

Certificate holders will be notified in writing of approval or denial of their request for reducing filing periods.

Certificate holders may request that they be allowed to file more frequently than the filing status selected by the department. Approval will be granted based upon justification contained in the certificate holder's request.

This rule is intended to implement Iowa Code sections 412.14, 423.13 and 423.14.

701—30.5(423) Collection requirements of registered retailers. A retailer registered with the department shall collect from the retailer's customers and remit to the department all use tax due on all tangible personal property or enumerated services rendered, furnished or performed in Iowa or the products or results of enumerated taxable services rendered, furnished, or performed, sold for use in Iowa, unless expressly authorized by the department to do otherwise.

This rule is intended to implement Iowa Code sections 423.9 and 423.10.

701—30.6(423) Bracket system to be used by registered vendors. A registered vendor who has occasion to sell tangible personal property or enumerated services rendered, furnished or performed in Iowa or products or results of enumerated taxable services rendered, furnished or performed may use the bracket system specified in 701—14.2(422), which was adopted under the provisions of the Iowa retail sales tax law.

The registered seller shall be required to remit tax to the department at the current rate applied to the purchase price of all taxable property or enumerated services rendered, furnished or performed in Iowa or the products or results of all enumerated taxable services sold.

This rule is intended to implement Iowa Code sections 422.68(1), 423.2 and 423.23.

701—30.7(423) Sales tax or use tax paid to another state. When a person has already paid to any other state of the United States a state sales, use, or occupational tax on specifically identified tangible personal property or taxable services on its sale or use, prior to bringing the property into Iowa, and the tax is equal to or greater than the current rate of tax imposed by the Iowa use tax law, no additional use tax shall be due the state of Iowa by such person.

If the amount of tax already paid by such person to any other state of the United States on specifically identified tangible personal property or taxable services prior to bringing the property into Iowa is less than the current rate of tax imposed by Iowa law, use tax shall be due the state of Iowa on the difference in tax paid to the foreign state and the tax due under the Iowa law.

When a person claims exemption from payment of use tax on the grounds that the tax has already been paid to any other state of the United States with respect to the sale or use of the property or service in question prior to bringing it into Iowa, the burden of proof is upon that person to show the department, county treasurer, or the motor vehicle division of the Iowa department of transportation, by document, that the tax has been paid.

Credits shall not be allowed for sales, use, or occupational tax already paid in any state of the United States against the Iowa use tax relating to the acquisition cost of property being brought into this state when such tax already paid was paid on the gross receipts of lease/rental payments of tangible personal property used in another state.

This rule is intended to implement Iowa Code section 423.25.

701—30.8(423) Registered retailers selling tangible personal property on a conditional sale contract basis. A retailer shall report and remit to the department the full amount of tax computed on the full sale price on the return for the quarterly period during which the sale was made.

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

701—30.9(423) Registered vendors repossessing goods sold on a conditional sale contract basis. A registered retailer repossessing tangible personal property which has been sold on a conditional sale contract basis and remitting use tax to the department on the full purchase price may take a deduction on the retailer's use tax return for the quarterly period in which the goods were repossessed in an amount equal to the credit allowed to the purchaser for the goods returned, if the retailer has returned use tax to the purchaser on the unpaid balance.

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

701—30.10(423) Penalties for late filing of a monthly tax deposit or use tax returns. Renumbered as 701—10.30(423), IAB 1/23/91.

701—30.11(423) Claim for refund of use tax. A claim for refund of use tax shall be made upon forms provided by the department. Each claim shall be filed with the department, properly executed and clearly stating the facts and reasons upon which the claim is based.

Refunds of tax shall be made only to those who have actually paid the tax. A person or persons may designate the person who collects the tax as an agent for purposes of receiving a refund of tax. Use tax paid to the county treasurer or motor vehicle division, Iowa department of public safety, on motor vehicles shall be refunded directly to the person paying the tax upon presentation of a properly documented claim.

When a person believes the tax, penalty, or interest paid or to be paid will be found not to be due at some later date, then to prevent the statute of limitations from running, a claim for refund must be filed with the department within the statutory period provided in Iowa Code section 422.73(1). The claim must be filed requesting that it be held in abeyance pending the outcome of any action which will have a direct effect on the tax involved and a possible refund. Nonexclusive examples of situations would be court decisions, departmental rulings, and commerce commission decisions. See rule 701—12.9(422) for specific examples.

This rule is intended to implement Iowa Code sections 422.73(1) and 423.23.

701—30.12(423) Extension of time for filing. Upon a proper showing of the necessity for extending the due date, the director is authorized to grant an extension of time in which to file a return. The extension shall not be granted for a period longer than 30 days. The request for the extension must be received on or before the original due date of the return, and it must be signed by the retailer or a duly authorized agent.

This rule is intended to implement Iowa Code section 423.13.

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CHAPTER 31
RECEIPTS SUBJECT TO USE TAX
[Prior to 12/17/86, Revenue Department[730]]

701—31.1(423) Transactions consummated outside this state. The Iowa use tax law is complementary to the Iowa sales tax law. The general rule is that when a transaction would be subject to Iowa sales tax if consummated in Iowa, such transaction, although consummated outside the state of Iowa but involving tangible personal property sold for use in Iowa and so used in Iowa, is subject to Iowa use tax. Also, when a transaction involving taxable services is subject to Iowa sales tax if rendered, furnished or performed in Iowa, such transaction, although consummated outside the state of Iowa but the product or result of such service is used in Iowa, is subject to Iowa use tax.

701—31.2(423) Goods coming into this state. When tangible personal property is purchased outside the state of Iowa for use or consumption in this state, such sale shall be subject to use tax. Such sale is taxable regardless of the fact that the purchaser's order may specify that the goods are to be manufactured or procured by the seller at a point of origin outside the state, and the seller is required to report all such transactions and collect and remit to this state use tax on all taxable purchases.

701—31.3(423) Sales by federal government or agencies to consumers. A consumer purchasing tangible personal property or an enumerated taxable service for use in Iowa from the federal government or any of its agencies shall be liable for the payment of Iowa consumer's use tax and shall report and remit the tax due on a consumer's tax return which is furnished by the department.

701—31.4(423) Sales for lease of vehicles subject to registration—taxation and exemptions. When vehicles subject to registration are sold for subsequent lease, use tax is due in the initial instance. However, several important exemptions exist which are applicable to the sale for subsequent lease of vehicles subject to registration. The exemption applicable to sales of other leased property is not applicable to sales of vehicles subject to registration for subsequent lease. The following circumstances should be kept in mind when purchasing a vehicle subject to registration for subsequent lease:

1. The purchase of certain motor vehicles for long-term lease of more than 60 days, but less than 12 months, is not exempt from use tax. See 701—subrule 26.68(2) relating to taxation of long-term leases.
2. Effective January 1, 1997, the purchase of a vehicle subject to registration with a gross vehicle weight rating of less than 16,000 pounds, excluding motorcycles and motor bicycles, if actually leased for a period of 12 months or more is exempt from use tax. See 701—31.5(423) and 701—32.11(423) relating to taxation of long-term leases.
3. The purchase of "automobiles" for short-term, taxable lease is exempt from tax. See rule 701—32.11(423) and 701—Chapter 27 for specific information concerning this exemption.
4. See rule 701—32.9(423) for the specifics of an exemption applicable to trucks commonly known as tractors and semitrailers purchased for lease with the subsequent sole use in Iowa in interstate commerce.
5. The exemption from tax allowed for the use of tangible personal property by a person regularly engaged in the business of leasing if the period of the lease is for more than five months and the leasing of the property is subject to sales tax is not applicable to vehicles subject to registration.

701—31.5(423) Motor vehicle use tax on long-term leases. On or after January 1, 1997, a tax shall be imposed on the lease price of certain vehicles subject to registration under Iowa Code chapter 321 which are leased under long-term lease agreement.

31.5(1) *Vehicles subject to long-term lease defined.* Effective January 1, 1997, motor vehicles subject to registration with gross vehicle weight rating of less than 16,000 pounds, excluding motorcycles and motorized bicycles, which are actually leased for a period of 12 months or more, will be subject to a motor vehicle lease tax based upon the lease price as set forth in subrule 31.5(2). Such vehicles must be leased by a lessor licensed pursuant to Iowa Code chapter 321F. A registration receipt

for a vehicle subject to registration or issuance of a certificate of title will not be issued until the tax is paid in the initial instance. If the lease is terminated prior to the expiration of the lease period, no refund will be allowed for tax previously paid on the monthly lease payments. Effective July 1, 1997, if a lease is terminated prior to the expiration of the lease period, a refund of tax previously paid under this rule will be allowed under Iowa Code section 322G.4. This definition of vehicles subject to long-term lease and subject to the tax under this rule includes vehicles leased under fixed-term or variable-term leases. Fixed-term lease means a lease contract in which the lease term is for a certain designated period of time. A payment amount charged under a fixed-term lease can be fixed or variable. Variable-term lease means a lease contract in which the lease term may contain an initial stated lease period with additional extension options that may be exercised at the discretion of the lessee. A payment amount charged under a variable-term lease may be fixed or variable. Exercise of an extension results in an extension of the original lease period for the purpose of this rule. A fixed- or variable-term lease may also contain a provision for adjustments which may be made by the lessor at the conclusion of the lease.

Vehicles entering this state under a lease entered into on or after January 1, 1997, will be subject to tax on the date the vehicle enters Iowa for the remaining lease period. Vehicles entering this state under an optional lease period exercised under a lease entered into on or after January 1, 1997, will be subject to tax on the date the vehicle enters Iowa for the remaining option period. A credit for tax paid on the lease for the lease period at issue where incidence of the tax was on the lessor and the tax was paid by the lessor to another state will be applied to the motor vehicle lease tax due on the lease from the lessor in Iowa.

When motor vehicle lease tax has been paid on a qualifying lease under this rule, and prior to the expiration of the lease the vehicle subject to the lease is destroyed by means such as fire, accident, or vandalism, to the extent that it constitutes a total loss of the vehicle, a credit for motor vehicle lease tax paid for the period remaining on the previous lease will be allowed when another vehicle is substituted under the original lease or a new lease is executed with the intent to replace the vehicle subject to the previous lease. To initially qualify for the credit, there must be a total loss of the vehicle subject to the previous lease, a new lease must be executed or a vehicle must be substituted under the original lease. To qualify for the credit, the new lease or substituted vehicle under the original lease must meet the following: The new lease must be executed by the same lessor and lessee, for lease of a vehicle of the same or similar make, model, year and options as the vehicle subject to the previous lease, for the remaining lease period as the previous lease, for the same lease price and the lease must contain the same lease terms as the previous lease.

When a vehicle subject to a taxable lease under this rule is returned to the lessor and the lessor replaces the vehicle with a different vehicle, but a new lease is not executed, the replacement is not subject to tax. Often this type of return occurs when an original leased vehicle has numerous mechanical problems, but has not been declared a "lemon" under Iowa Code chapter 322G. Instead of requiring the lessee to go through the "lemon law" process, the lessor replaces the vehicle under the same lease contract. In this type of situation, tax would not be due because there has not been a new lease transaction subject to tax.

A fixed- or variable-term lease that is subject to the motor vehicle lease tax under this rule may contain a provision allowing adjustments to be made by the lessor at the conclusion of the lease which may affect the rental receipts for the term of that lease. Such adjustments may result in a debit, credit, or no change in the rental receipts. Such adjustments may include, but are not limited to, the condition of the vehicle, value of the vehicle, sale price of the vehicle, mileage incurred, and variable payment amount during the initial qualifying lease period. Such an adjustment may result in a corresponding debit or credit of tax due from the lessor.

If a lease is a variable-term lease with a variable payment amount, the lease payment for the initial minimum 12-month period shall be computed using the payment amount in effect on the date the lease is executed between the parties. If the payment amount then varies during that initial minimum 12-month period resulting in a debit or credit of tax previously paid for that period, such amount will be computed as an adjustment made at the conclusion of the lease. If the total of the adjusted lease payments is greater

than the originally calculated lease payments, the incremental increase is subject to lease tax and the tax is to be remitted by the lessor directly to the department.

Vehicles entering this state under a lease or lease option extending from a lease executed before January 1, 1997, will not be subject to the motor vehicle lease tax imposed under this rule. However, such vehicles will be subject to tax on the use of the vehicle in Iowa based upon the fair market value of the vehicle, payable by the lessor to the county treasurer at the time of registration or titling of the vehicle.

31.5(2) *Collection and computation of tax on long-term leases.* For leases entered into on or after January 1, 1997, a motor vehicle lease tax is imposed on certain vehicles subject to registration which are leased under terms as defined in subrule 31.5(1). Motor vehicle lease tax shall be paid by the owner of the vehicle to the county treasurer, Iowa department of transportation, or Iowa department of revenue. A registration receipt or certificate of title for the vehicle shall not be issued until the tax is paid in the initial instance. The amount subject to tax must be computed on each lease transaction based on the lease price. The lease price shall be computed by multiplying the number of months of the lease by the monthly lease payments, plus down payment, which shall include trade-ins and any additional costs or fees paid by the lessee. Capitalized costs paid by the lessee are generally included as part of the monthly lease payments. Capitalized costs may include, but are not limited to, rustproofing, floor mats, pin striping, management fees, reserved charges, air conditioning, stereo, mud flaps, lease acquisition fee, and finance charges. Down payment is defined for the purpose of this rule as any payment or trade-in made by the lessee for the purpose of reducing the lease price. In certain instances, there are costs associated with the lease and entering into the lease, which are not refundable, that are negotiated by the lessor and lessee, resulting in an agreement that these costs will be paid by the lessee separately and in addition to the monthly lease payments. Costs for such items, whether normally capitalized or not, which are paid separately by the lessee in order to reduce the lease price, shall be treated as a down payment and shall be added in the computation of the lease price. Trade-in is treated as a down payment and is defined for the purpose of this rule as tangible personal property which is traded by the lessee to the lessor in order to reduce the lease price. The value of the trade-in shall be added in the computation of the lease price. The lease price shall not include any manufacturer's rebate or refundable deposit.

Effective for leases entered into on or after July 1, 1997, the lease price shall not include manufacturer's rebate, refundable deposit, title fee, registration fee, vehicle lease tax imposed under this rule, federal excise taxes attributable to the sale of the vehicle to the owner or to the lease of the vehicle by the owner, optional service or warranty contracts subject to tax under Iowa Code section 422.43(6), insurance, or any finance charge imposed on these excluded items. Any item excluded from the taxable lease price shall be documented by the owner by maintaining an adequate record of the amount of each item excluded. If a lessor and lessee enter into an agreement that the tax imposed under this rule shall be paid by the lessee, either in a lump sum payment or as part of the monthly lease payments, the total cost of the tax shall not be included in the computation of the lease price for the purpose of imposing the tax under this rule. Deposit is defined for the purpose of this rule as a security which is refundable based upon the terms of the lease. The lease price shall not include a roll-over deficiency from a previously purchased or leased vehicle to the extent it can be shown that tax had been paid on the amount to be rolled over from the previously purchased or leased vehicle. For instance, lessee A has a previously purchased vehicle with an outstanding loan balance of $4,000. Lessee B has a previously leased vehicle with a total of outstanding payments of $4,000. As part of the previous transactions that resulted in these outstanding balances, use tax was previously paid on the $4,000 balances by lessees A and B. Each lessee now wishes to lease a new vehicle and pay the outstanding balance owed by each as part of the monthly lease payments for the new vehicles. The balances for each lessee may be rolled over in the lease costs to be paid by the lessees. However, the amount of the balances that are rolled over are excluded from each of the computations of the lease price under this rule.

EXAMPLE 1. Iowa lessor leases a vehicle on January 20, 1997, for use in Iowa for a period of 36 months. The total lease price is $18,814.00 which includes all capitalized costs that were negotiated as part of the lease. Incidence of the tax is upon the lessor. The lessor and lessee did not negotiate nor did they agree to include the cost of the motor vehicle lease tax as part of the lease price. The total lease

price to be reported by the lessor for computation of the tax at the time of registration or titling of the vehicle is $18,814.00. The motor vehicle lease tax due on this lease would be $940.70 ($18,814.00 × 5%) payable by the lessor to the county treasurer at the time of registration or titling of the vehicle. The monthly lease payment to be paid by the lessee is $522.61 ($18,814.00 divided by 36 months).

EXAMPLE 2. Iowa lessor enters into a lease with Dave Jones on January 8, 1997, for the lease of a vehicle for use in Iowa for a period of 36 months. The monthly lease payments for the vehicle are computed to include rustproofing, floor mats, and various other capitalized costs. However, based on an agreement between Dave Jones and the lessor, costs of the mud flaps and a stereo system are not included in the monthly lease payments. Instead, the lessor and Dave Jones negotiate and agree to allow Dave Jones to pay the total for the mud flaps and stereo separately. Dave Jones executes a check payable to the lessor for the total sum of such fees. The total sum paid in the separate check issued by Dave Jones for the mud flaps and stereo is considered a down payment and must be included in the computation of motor vehicle lease tax as a cost that is part of the total lease price.

Tax due under this rule for a fixed-term lease will be due on the entire lease term contracted for between the parties. Tax on a variable-term lease shall be based on the entire initial term stated in the lease.

Tax on a qualifying lease under this rule will be due at the time the vehicle subject to the lease is required to be registered or titled. Tax on any optional lease periods will be considered due at the time the optional lease period is exercised under the lease. Tax on transactions requiring registration or titling of a vehicle in this state will be remitted to the county treasurer or department of transportation at the time of registration or titling. Tax on transactions not involving a vehicle or vehicles having to be registered or titled in this state will be remitted to the department of revenue. Such transactions include the re-lease of the same vehicle or vehicles involving the same lessor and lessee or exercise of an option under a lease by a lessee.

Incidence of motor vehicle lease tax falls upon the owner/lessor of the vehicle. Therefore, the lessee cannot invoke any exemptions from the motor vehicle lease tax.

Reporting and remittance of tax due to the Iowa department of revenue will be remitted on or before 15 days from the last day of the month that the tax becomes due. Failure to timely report or remit any of the tax when due under this rule will result in penalty and interest being imposed on the tax due pursuant to Iowa Code sections 423.18 and 423.23.

The county treasurer or the state department of transportation shall require every applicant to have a registration receipt for a vehicle subject to this tax and to submit the total lease price computed in the manner indicated in subrule 31.5(2) to be reported on a form designated by the director of revenue. Also see 701—34.9(423).

On or before the tenth day of each month, the county treasurer or the state department of transportation will remit to the department of revenue the amount of tax collected during the preceding month.

EXAMPLE 3. Licensed lessor located in Iowa contracts with Joe Smith to lease a new automobile for use in Iowa for a contract period of 12 months. Motor vehicle lease tax would be due by the lessor payable to the county treasurer at the time of registration based on the lease price for the 12-month lease period.

EXAMPLE 4. Licensed lessor located in Iowa contracts with Joe Smith to lease a used automobile for use in Iowa for a contract period of 12 months. Motor vehicle lease tax was due and paid to the county treasurer at the time of registration based on the lease price for the 12-month period. Prior to the expiration of the 12-month lease period, the lease is terminated. Upon return of the vehicle the lessor uses the vehicle for a company car. The lessor cannot receive a refund of the motor vehicle lease tax that was paid for the portion of the remaining lease period because, under the statute, refunds of motor vehicle lease tax are not allowed. In addition, the lessor would be required to pay use tax on the fair market value of the vehicle for use of that vehicle for a purpose other than for lease. See Iowa Code section 423.4(16) and 701—31.4(422,423) and 32.11(423).

EXAMPLE 5. Licensed lessor located in Iowa leases a vehicle for a 24-month period. Motor vehicle lease tax is paid on the lease price for the 24-month period. After 18 months, the lease is terminated. The lessor cannot receive a refund of the tax paid on the remaining lease period.

EXAMPLE 6. On January 20, 1997, a licensed lessor located in Iowa leases an automobile to Sally Jones for use in Iowa for a contract period of 12 months with additional 30-day lease options which can be exercised after the 12-month lease has been fulfilled. The lessor must pay motor vehicle lease tax on the lease price for the 12-month period payable to the county treasurer at the time of registration. In addition, the 30-day option periods are considered to be extensions of the original lease. As a result, the lessor must pay motor vehicle lease tax to the Iowa department of revenue on each 30-day lease option, due at the time exercised by Sally Jones. Tax must be remitted to the Iowa department of revenue on or before 15 days from the last day of the month in which the tax became due.

EXAMPLE 7. On March 17, 1997, a licensed lessor located in Iowa leases a fleet of ten automobiles to XYZ insurance company for use in Iowa for a lease period of 12 months. Motor vehicle lease tax is due on the lease price for each of the ten vehicles for the 12-month lease period payable to the county treasurer.

EXAMPLE 8. Licensed lessor located in Illinois enters into a lease with Sally Smith on January 8, 1997, to lease an automobile for a lease period of 12 months. With 4 months remaining on the lease, Sally moves to Iowa and the vehicle is titled in Iowa. Motor vehicle lease tax would be due on the date of use in Iowa based on the lease price for the remaining 4 months under the lease. The tax due would be payable by the lessor to the county treasurer at the time the vehicle is registered or titled in Iowa. However, credit would be allowed for a similar tax previously paid on the lease for the lease period at issue, paid by the lessor to another state to be applied against the Iowa lease tax due, if incidence of the tax paid to the other state also fell upon the lessor. This credit against Iowa lease tax would be allowed regardless of the tax base used by the other state for the computation of the tax previously paid. If the tax qualifies for the credit by meeting the previously mentioned criteria, credit against the Iowa tax owed may be computed by completing the following steps:

Step 1. Compute the Iowa lease tax based on the remaining lease period from the date the vehicle enters Iowa through the expiration date of the lease. See subrule 31.5(2).

Step 2. Determine the amount of tax paid to the other state for the remaining lease period. To determine this, do the following:

1. Divide the total amount of tax paid to the other state by the entire term of the lease. This will result in the amount of monthly tax paid on the lease.

2. Multiply the monthly tax paid by the months remaining on the lease term from the date the vehicle entered Iowa through the expiration date of the lease.

Step 3. Compare the amount of tax paid to the other state for the remaining period (result in Step 2) to the amount of tax due to the state of Iowa for the remaining lease period (result in Step 1). The amount of Iowa vehicle lease tax due, if any, will depend upon whether the other state will allow for a refund of the tax previously paid.

1. If the other state will refund the tax previously paid for the remaining lease period, then the amount of Iowa vehicle lease tax computed in Step 1 is due.

2. If the tax paid to the other state for the remaining lease period is greater and the other state will not refund the tax previously paid for the remaining lease period, then no additional Iowa lease tax is due.

3. If the amount of tax due to the state of Iowa for the remaining lease period is greater and the other state will not allow a refund of the tax previously paid, then the difference between the amount of tax due to the state of Iowa for the remaining lease period and the tax paid to the other state for the remaining lease period is the amount owed (result in Step 1 - result in Step 2).

EXAMPLE 9. Licensed lessor located in Minnesota enters into a lease with Joe Smith on November 21, 1997, to lease an automobile for a lease period of 12 months with 30-day option periods to be exercised at Joe Smith's discretion at the conclusion of the initial 12-month lease period. After one year and 10 days under the lease, Joe moves to Iowa. The vehicle is titled in Iowa. Motor vehicle lease tax is due and payable by the lessor to the county treasurer on a prorated basis for the days remaining on the exercised

option period. If incidence of the tax previously paid to the other state was on the lessor, credit would be allowed for a similar tax previously paid by the lessor to the other state for the lease period at issue to be applied against the Iowa lease tax due (see Example 8). If additional option periods are exercised by Joe under the lease, motor vehicle lease tax will be due at the time the option is exercised, payable by the lessor to the Iowa department of revenue. Tax must be remitted to the Iowa department of revenue on or before 15 days from the last day of the month in which the tax became due.

EXAMPLE 10. Iowa lessor enters into a lease with Sally Jones on August 11, 1996, for use of a vehicle in Iowa. The lease is for a period of 12 months. Motor vehicle lease tax is not due on this because the lease was entered into prior to January 1, 1997, the effective date of the motor vehicle lease tax.

EXAMPLE 11. Iowa lessor enters into a lease with Joe Smith on January 1, 1996, for use of a vehicle in Iowa. The lease is for a period of 12 months and contains 30-day options that may be exercised by Joe Smith at the conclusion of the initial 12-month period. On January 1, 1997, Joe Smith exercises a 30-day option. Motor vehicle lease tax is not due on the exercised option period because the option is an extension of the original lease which was entered into prior to January 1, 1997, the effective date of the motor vehicle lease tax.

Examples 12 and 13 offer guidance for computing the tax imposed in this rule for leases entered into prior to July 1, 1997.

EXAMPLE 12. Lessor and lessee located in Iowa enter into a qualifying lease agreement on March 9, 1997. The price negotiated by the parties for the lease is $9,120, which will be paid by the lessee in 36 monthly installments. The lessor and lessee also agreed that the lessee will separately pay by personal check the total cost of each of the following items: tax, $456; title, $35; license, $164; and tinted windows, $225. The total lease price of the leased vehicle, including the items separately paid by personal check by the lessee is $10,000. The amount to be reported to the county treasurer at the time of registration or titling of the vehicle is $10,000. The amount of tax due from the owner/lessor of the vehicle at the time of registration or titling to the county treasurer is $500 ($10,000 × 5% = $500).

EXAMPLE 13. Lessor and lessee located in Iowa enter into a qualifying lease agreement on June 24, 1997. The lessor and lessee agree that the lessee will provide a down payment, trade-in, and pay the tax, title, and license as a capitalized cost over the term of the lease agreement. The total lease price, including the down payment, trade-in, and capitalized costs, is $10,000. To compute the total lease price to be reported to the county treasurer when the lease price includes tax as a negotiated capitalized cost of the lease to be paid by the lessee, the owner/lessor may multiply the total lease price of $10,000 by the factor of 1.0526316 which results in the sum of $10,526.32. The total of $10,526.32 is the total lease price to be reported by the owner/lessor to the county treasurer or department of transportation at the time of registering or titling of the vehicle. The amount of tax due from the owner/lessor of the vehicle at the time of registration or titling to the county treasurer or department of transportation is $526.32 ($10,526.32 × 5% = $526.32).

Effective July 1, 1997, the following examples may be used for guidance in computing the lease price and motor vehicle lease tax imposed under this rule.

EXAMPLE 14. Lessor and lessee located in Iowa enter into a qualifying lease agreement on July 12, 1997. The price negotiated by the parties for the lease is $9,120, which will be paid by the lessee in 36 monthly installments. The lessor and lessee also agreed that the lessee will separately pay by personal check the total cost of each of the following items: tax, $467.25; title, $35; license, $164; and tinted windows, $225. However, effective July 1, 1997, tax, title fees, and license fees are not to be included in the computation of the lease price. As a result, the amount to be reported to the county treasurer at time of registration or titling of the vehicle is $9,345 ($9,120 - the total monthly payments + $225 -cost of the tinted windows = $9,345). The amount of tax due from the owner/lessor of the vehicle at the time of registration or titling to the county treasurer is $467.25 ($9,345 × 5% = $467.25).

EXAMPLE 15. Lessor and lessee located in Iowa enter into a qualifying lease agreement on August 11, 1997. The lessor and lessee agree that the lessee will provide a down payment, trade-in, and pay the tax, title, license, pin striping, and cost of an upgraded stereo system as capitalized costs over the term of the lease agreement. The total lease price, including the down payment, trade-in, and capitalized costs, but excluding the tax, title, and license to be paid by the lessee in the monthly lease payments, is

$10,000. The total of $10,000 is the total lease price to be reported by the owner/lessor to the county treasurer or department of transportation at the time of registering or titling of the vehicle. The amount of tax due from the owner/lessor of the vehicle at the time of registration or titling to the county treasurer or department of transportation is $500 ($10,000 × 5% = $500).

701—31.6(423) Sales of aircraft subject to registration. On and after July 1, 1999, taxable sales in Iowa of aircraft subject to registration under Iowa Code section 328.20 are subject to Iowa use tax and not Iowa sales tax. This use tax is to be collected by the Iowa department of transportation at the time of the aircraft's registration. The sale of an aircraft subject to registration is not subject to local option sales tax, either that imposed by Iowa Code chapter 422B or that imposed by Iowa Code chapter 422E. For the purposes of this rule, an "aircraft" is any contrivance now known, or hereafter invented, used or designed for navigation of or flight in the air, for the purpose of transporting persons or property, or both. See rule 701—32.13(423) for exemptions applicable to aircraft subject only to use tax.

This rule is intended to implement Iowa Code section 423.2 as amended by 1999 Iowa Acts, chapter 168.

701—31.7(423) Communication services. On and after July 1, 2001, the purchase price of communication service furnished or delivered to consumers or users within Iowa is subject to use tax. For the purposes of Iowa use tax law, communication service is defined to be tangible personal property. Tax will be imposed if the billing for the communication service is dated on or after July 1, 2001. See rule 701—18.20(422,423) for an explanation of the sales tax on communication services and for an explanation of excise tax on communication services generally.

This rule is intended to implement Iowa code subsection 423.1(12) as amended by 2001 Iowa Acts, House File 736.

These rules are intended to implement Iowa Code sections 421.6, 421.17, 423.4(16), and 423.25 and Iowa Code section 423.7A as amended by 1997 Iowa Acts, Senate File 222.

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◊ Two or more ARCs

CHAPTER 32
RECEIPTS EXEMPT FROM USE TAX

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

701—32.1(423) Tangible personal property and taxable services subject to sales tax. The gross receipts from the sale of tangible personal property which are subject to the imposition of sales tax under Iowa Code chapter 422 shall be exempt from use tax if the sales tax has been paid to the department or to a retailer. This shall not apply to vehicles subject to registration or the purchase of a taxable service enumerated in Iowa Code section 422.43 prior to July 1, 1994. On and after that date the rendering, furnishing, or performing of a service taxable under Iowa Code chapter 422 shall be exempt from use tax if the sales tax has been paid to the department or to a retailer. Prior to, on, and after July 1, 1994, either a sales tax or a use tax, but not both, shall be imposed upon the use in Iowa of services rendered, furnished, or performed in this state.

This rule is intended to implement Iowa Code subsection 423.4(1).

701—32.2(423) Sales tax exemptions applicable to use tax. When an exemption is allowed for sales tax purposes to any sale of tangible personal property the same shall apply for use tax, except for the exemptions provided in Iowa Code section 422.45, subsections 4 and 6, as they relate to vehicles subject to registration. On and after July 1, 2001, if any exemption from sales tax is allowed when a service is rendered, furnished, or performed, including the service of tangible personal property rental, the same exemption shall apply to any service subject to use tax.

This rule is intended to implement Iowa Code subsection 423.4(3) and subsection 423.4(4) as amended by 2001 Iowa Acts, House File 715.

701—32.3(423) Mobile homes and manufactured housing. A use tax is not to be imposed on any mobile home or manufactured housing if the tax has been previously imposed pursuant to Iowa Code section 423.2 and paid. In order for the exemption to be allowed, the purchaser of the mobile home or manufactured housing has the responsibility to provide the county treasurer with documentation verifying that the Iowa use tax was previously paid. All taxable mobile homes or manufactured housing is subject to a use tax in an amount equal to 60 percent of the mobile home's or manufactured housing's purchase price (40 percent of the home's or housing's purchase price is exempt from use tax). In arriving at the purchase price upon which the use tax is to be computed, the trade-in allowance provided in Iowa Code section 423.1(6)*"b"* is a reduction in the purchase price if (1) the property traded for the mobile home or manufactured housing is a type of property normally sold in the regular course of business of the retailer selling the home or housing, and (2) the retailer intends ultimately to sell the traded property at retail or to use the traded property in the manufacture of a like item.

EXAMPLE 1: A manufactured housing dealer receives from the factory a new manufactured home that has a sales price of $20,000. The dealer sells it and takes the purchaser's old manufactured home worth $5,000 in trade. The dealer keeps the traded-in manufactured home as an office. The Iowa use tax is computed as follows:

Sales price	$20,000
Less trade-in	$ 5,000
Buyer's price	$15,000
Amount subject to tax ($20,000 × 60%)	$12,000
Use tax at 5%	$ 600

The trade-in allowance does not apply since the traded-in manufactured home will not be ultimately sold at retail or used to manufacture a like item.

EXAMPLE 2: Same facts as given in Example 1 with the exception that the dealer lists the trade-in for sale.

Sales price	$20,000
Less trade-in	$ 5,000
Buyer's price	$15,000
Amount subject to tax ($15,000 × 60%)	$ 9,000
Use tax at 5%	$ 450

The trade-in allowance applies since the traded-in manufactured home will be ultimately sold at retail.

This rule is intended to implement Iowa Code sections 423.4(11) and 423.4(12) as amended by 1999 Iowa Acts, chapter 188.

701—32.4(423) Exemption for vehicles used in interstate commerce. Trailers and semitrailers used initially in Iowa on and after July 1, 1986, and registered under Iowa Code chapter 326, are exempt from tax. These trailers and semitrailers are not subject to the record-keeping requirement and other requirements of the next paragraph. See rule 32.10(423) for an additional exemption for vehicles operated but not registered under Iowa Code chapter 326.

For trailers and semitrailers registered under Iowa Code chapter 326 and initially used in Iowa between July 1, 1985, and June 30, 1986, inclusive, and for any other vehicle registered under chapter 326, including those purchased for lease, and truck and road tractors, a use tax is not to be imposed provided that the vehicle is used in interstate commerce, accrues at least 25 percent of its mileage outside of Iowa and is registered for a gross weight of 13 tons or more. Mileage records must be maintained for each vehicle by the vehicle owner on a fiscal year basis which begins on July 1 and ends on June 30. For trailers and semitrailers, the requirements of this paragraph and the subsequent paragraph are not applicable if the trailer is registered as of July 1, 1986, or is initially registered on or after that date. These trailers and semitrailers are treated as if they have been used initially and registered in Iowa on or after July 1, 1986, and the first paragraph of this rule is applicable to their use. The vehicle will be subject to use tax if the required mileage outside Iowa is not attained during each fiscal year. For purposes of determining eligibility for this exemption, mileage accrued in the year before the first full fiscal year of operation must be added to the mileage accrued during the first full fiscal year of operation and mileage accrued in the year after the last full fiscal year of operation must be added to the mileage accrued during the last full fiscal year of operation. The vehicle owner is responsible for maintaining mileage records that prove eligibility for the exemption.

For assessments issued pursuant to this rule on and after July 1, 1998, if a vehicle meets the requirement that 25 percent of the miles operated accrue 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 a vehicle is found not to have met the exemption requirements of this paragraph in its first four years of operation, or the exemption was revoked, the value of the vehicle upon which use tax shall be imposed is the book or market value, whichever is less, at the time the exemption requirements first were not met or at the time the exemption was revoked. However, if exemption from use tax is claimed for a vehicle under this paragraph and that vehicle is, subsequently, never used in an exempt fashion, then the purchase price of the vehicle is the value upon which any assessed tax shall be computed.

EXAMPLE: Company A purchases a vehicle stating that its future use will be in interstate commerce; 25 percent of its miles traveled accrue outside the state of Iowa. In fact, the vehicle is never driven outside the state of Iowa. Use tax is computed on the purchase price of the vehicle paid by Company A.

EXAMPLE

	Iowa Miles	Non-Iowa Miles	Total	Percent Non-Iowa
1/1/86-6/30/86	45,000	5,000	50,000	10%
7/1/86-6/30/87	305,000	145,000	450,000	32%
	350,000	150,000	500,000	30%

In this example, the vehicle was acquired on January 1, 1986, and traveled 50,000 miles through June 30, 1986, of which 5,000 miles were outside Iowa. From July 1, 1986, through June 30, 1987, the vehicle traveled 450,000 miles of which 145,000 miles were outside Iowa. The use tax exemption is applicable in this situation even though the vehicle traveled only 10 percent of its mileage outside Iowa in the year of acquisition since it traveled 30 percent of its mileage outside Iowa in the year of acquisition plus its first full fiscal year of operation.

This rule is intended to implement Iowa Code section 423.4(10) as amended by 1998 Iowa Acts, House File 2541.

701—32.5(423) Exemption for transactions if sales tax paid. As of July 1, 1986, the use of tangible personal property is exempt from tax if the gross receipts from the sale of that property are subject to Iowa sales tax and if the sales tax has been paid either to a retailer or to the department. The exemption does not include vehicles subject to registration or subject only to the issuance of a certificate of title.

This rule is intended to implement Iowa Code subsection 423.4(1).

701—32.6(423) Exemption for ships, barges, and other waterborne vessels. On and after July 1, 1986, tax will not be imposed upon the use, within Iowa, of any ship, barge, or other waterborne vessel if that use is primarily for the transportation of property or cargo for hire on the rivers bordering this state. This exemption is also applicable to tangible personal property used as material in the construction of or as a part for the repair of any such ship, barge, or waterborne vessel. The use must be on a river or rivers bordering Iowa, not on any river or rivers bounded on both banks by Iowa territory. The exemption does not apply for a use for any purpose other than the purpose described in this rule.

This rule is intended to implement Iowa Code subsection 423.4(10).

701—32.7(423) Exemption for containers. The use of containers in the collection, recovery, or return of empty beverage containers which are subject to the Iowa deposit law (Iowa Code chapter 455C) is exempt from tax on and after July 1, 1986.

This rule is intended to implement Iowa Code subsection 423.1(1).

701—32.8(423) Exemption for building materials used outside this state. The use in Iowa by a contractor-retailer, manufacturer, or manufacturer's subcontractor of building materials, supplies, or equipment in the performance of construction contracts outside this state, the sale or use of which is not treated as a retail sale in this state under rule 701—19.5(422), is not subject to use tax.

This rule is intended to implement Iowa Code subsection 423.1(10).

701—32.9(423) Exemption for vehicles subject to registration. The use of vehicles, as defined in Iowa Code section 321.1, subsections 4, 6, 8, 9, and 10, except vehicles that are designed primarily for carrying persons, is exempt from tax if the vehicles are 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. Such vehicles are commonly known as motor trucks, truck tractors, road tractors, trailers, or semitrailers. The exemption is retroactive to January 1, 1973.

This rule is intended to implement Iowa Code subsection 423.4(7).

701—32.10(423) Exemption for vehicles operated under Iowa Code chapter 326. Vehicles operated under Iowa Code chapter 326 initially in Iowa on and after July 1, 1990, are exempt from tax. To claim the exemption to which this rule is applicable, it is not necessary that a vehicle be registered under Iowa Code chapter 326. The vehicle may be registered under some statute other than chapter 326; the exemption still applies. For details regarding vehicles registered under Iowa Code chapter 326 and in interstate commerce, see 701—32.4(423).

This rule is intended to implement Iowa Code section 423.4(10).

701—32.11(423) Exemption for vehicles purchased for rental or lease.

32.11(1) On and after July 1, 1992, the use of a vehicle subject to registration in any state is exempt from tax if the following conditions exist:

a. The vehicle is purchased for rental by a person regularly engaged in the business of renting vehicles, or is registered and titled for rental use by a motor vehicle dealer licensed under Iowa Code chapter 322; and

b. The vehicle is held for rental for a period of 120 days or more and actually rented for periods of 60 days or less by a person regularly engaged in the business of renting vehicles, including a motor vehicle dealer licensed under Iowa Code chapter 322 who rents automobiles to users; and

c. All rentals are subject to taxation under Iowa Code chapter 422C. See 701—Chapter 27 for information concerning rentals.

32.11(2) Long-term lease. On or after January 1, 1997, the use of a vehicle subject to registration in this state is exempt from tax if the following conditions exist:

a. The vehicle subject to registration is purchased for lease and titled by a lessor licensed pursuant to Iowa Code chapter 321; and

b. The vehicle has a gross vehicle weight rating of less than 16,000 pounds; and

c. The vehicle is actually leased for a period of 12 months or more; and

d. The lease is subject to taxation under Iowa Code section 423.7A. See rule 701—31.5(423) regarding long-term leases.

A lessor may maintain the exemption from use tax under Iowa Code section 423.4(16) for a 12-month qualifying lease that terminates at the conclusion of or prior to the contracted expiration date, if the lessor does not use the vehicle for any purpose other than for lease. Unless an exemption applies, once the vehicle is used by the lessor for a purpose other than for lease, the exemption from use tax under Iowa Code section 423.4(16) no longer applies and use tax is due on the fair market value of the vehicle, payable to the Iowa department of revenue (e.g., if the vehicle is used by the lessor as a company car). If a vehicle is subsequently leased and subject to tax, tax will be due and owing on any subsequent lease transaction. However, if a lessor exclusively maintains the vehicle for sale, then use tax is due on the purchase price of the vehicle at the time of sale and the tax is due and payable under the provisions of Iowa Code chapter 423.

This rule is intended to implement Iowa Code section 423.4(16) as amended by 1996 Iowa Acts, chapter 1125.

701—32.12(423) Exemption for vehicles previously purchased for rental. The use of motor vehicles subject to registration and previously purchased for rental is exempt from tax if the following circumstances exist:

1. The motor vehicle was registered and titled between July 1, 1982, and July 1, 1992, inclusive;
2. The motor vehicle was registered and titled to a motor vehicle dealer licensed under Iowa Code chapter 322;
3. The motor vehicle was rented to a "user" as that term is defined in Iowa Code section 422C.2 and 701—27.1(422,422C,423);
4. The dealer kept the vehicle on the inventory of vehicles for sale at all times;
5. The vehicle was to be immediately taken from the user when a buyer was found; and
6. The user was aware of this fact.

This rule is intended to implement Iowa Code chapter 423.

701—32.13(423) Exempt use of aircraft on and after July 1, 1999. On and after July 1, 1999, "aircraft" are subject only to use tax. See rule 701—31.6(423). As of that same date, the use of the following aircraft is exempt from tax:

32.13(1) Aircraft used in a scheduled interstate Federal Aviation Administration certified air carrier operation.

32.13(2) The use of an aircraft by an aircraft dealer who rents or leases the aircraft to another is exempt from tax if all of the following circumstances exist:

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

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

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

As soon as an aircraft is used for any purpose other than leasing or renting, or the conditions set out in paragraphs *"a," "b,"* and *"c"* are not continuously met, the dealer claiming the exemption is liable for the tax which would have been due but for the exemption set out in this subrule. Tax will be computed on the original purchase price paid by the dealer.

See rule 701—18.49(422,423) for a description of various aircraft parts and of services performed on aircraft which are exempt from sales and use tax.

This rule is intended to implement Iowa Code section 423.4 as amended by 1999 Iowa Acts, chapter 168.

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CHAPTER 33
RECEIPTS SUBJECT TO USE TAX DEPENDING ON METHOD OF TRANSACTION

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

701—33.1(423) Gifts and prizes. Rescinded IAB 9/4/91, effective 10/9/91.

701—33.2(423) Federal manufacturer's or retailer's excise tax. See rule 701—15.12(422,423) for the principles used to determine when federal excise tax is included in or excluded from the "purchase price" upon which Iowa use tax is based. The rule also contains a list of federal excise taxes which are currently includable in or excludable from the purchase price.

701—33.3(423) Fuel consumed in creating power, heat or steam for processing or generating electric current. Tangible personal property purchased outside the state and consumed in creating power, heat or steam for processing tangible personal property or for generating electric current intended to be sold ultimately at retail shall be exempt from use tax. If the property purchased to be consumed as fuel in creating power, heat or steam for processing is also used in the heating of the factory or office, ventilation of the building, lighting of the premises or for any use other than that of direct processing, that portion of the property so used shall be subject to use tax.

When buying tangible personal property, part of which is exempt as fuel under the provisions of the law, from an out-of-state seller registered to collect use tax for the state, the purchaser shall furnish to such registered seller a written certificate certifying the cost of the property which is to be used for processing and shall, therefore, be exempt. The certificate shall also show the cost of the property which is not to be used in processing and, therefore, taxable in order that the registered seller may properly bill the amount of use tax due. See 701—17.3(422).

701—33.4(423) Repair of tangible personal property outside the state of Iowa. A person who owns tangible personal property in the state of Iowa and sends such property or causes such property to be sent outside the state for the purpose of having it repaired and brings such property back into Iowa, shall be liable for the payment of use tax on the full charge if the service is enumerated.

When the repair is not an enumerated service subject to tax and is invoiced as a separate item from the materials furnished and used in the repair, tax shall be computed only on the charge made for the tangible personal property furnished by the repairer.

701—33.5(423) Taxation of American Indians.

33.5(1) *Definitions.*

"American Indians" means all persons of Indian descent who are members of any recognized tribe.

"Settlement" means all lands within the boundaries of the Mesquakie Indian settlement located in Tama County, Iowa, and any other recognized Indian settlement or reservation within the boundaries of the state of Iowa.

33.5(2) *Use tax.* Out-of-state purchases made by Indians which are purchased for use on a recognized settlement or reservation where delivery occurs on a recognized settlement or reservation to Indians who are members of the tribe located on that settlement or reservation are exempt from tax. Out-of-state purchases made by Indians where delivery occurs off a recognized settlement or reservation are subject to tax even though purchased for use on a recognized settlement or reservation.

33.5(3) *Use tax—vehicles subject to registration.* Vehicles subject to registration with county treasurers are exempt from use tax if delivery of the vehicle is made on a recognized settlement or reservation to Indians who are members of the tribe located on that settlement or reservation. Vehicles subject to registration with county treasurers are subject to use tax if delivery of the vehicle is made off a recognized settlement or reservation.

See rule 701—18.31(422,423) for the taxation of tangible personal property and services where the state sales tax may be applicable.

This rule is intended to implement Iowa Code sections 423.1, 423.2, and 423.7.

701—33.6(422,423) Exemption for property used in Iowa only in interstate commerce. In determining whether property used in interstate commerce is exempt from Iowa use tax, the following four circumstances will be considered. Any person claiming that use of property in Iowa is exempt from tax by virtue of its use in interstate commerce must prove that:

1. The use does not have a substantial nexus with Iowa; or
2. Iowa use tax is not fairly apportioned; or
3. Imposition of Iowa use tax results in discrimination against interstate commerce; or
4. The use tax imposed is not fairly related to services provided by Iowa and which aid the retailer or user.

See *Complete Auto Transit, Inc. v. Brady,* 430 U.S. 274, 51 L.Ed.2d 326, 97 S.Ct. 1076 (1977) and *D. H. Holmes Company, Ltd. v. McNamara,* 100 L.Ed.2d 21,108 S.Ct. 1619 (1988). The second prong, fair apportionment, will be satisfied where the tax credit, authorized by Iowa Code section 423.25, is granted. *D. H. Holmes,* 100 L.Ed.2d at 28.

701—33.7(423) Property used to manufacture certain vehicles to be leased. Tangible personal property which by means of fabrication, compounding, or manufacturing becomes an integral part of vehicles defined in Iowa Code section 321.1, subsections 4, 6, 8, 9, and 10, is exempt from use tax provided the vehicle is 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. Such vehicles are commonly known as motor trucks, truck tractors, road tractors, trailers, and semitrailers.

The exemption provided in this rule shall not be applicable to any vehicle designed primarily for the purpose of carrying persons.

Should a vehicle, which has been manufactured for lease and actually leased to a lessee for use outside the state of Iowa, have a "taxable moment" (as set forth in rule 33.6(422,423)) subsequent to the lease, tax would be owing and computed at the rate of 3 percent of the cost of the materials used in the manufacture of the vehicle.

The tax shall be paid on or before the last day of the month following the close of the quarter in which a taxable moment took place.

Sales of tangible personal property used as described in this rule and otherwise subject to Iowa retail sales tax imposed pursuant to Iowa Code section 422.43 are not exempt from the sales tax under the provisions of this rule.

The exemption provided in this rule shall be retroactive to January 1, 1973.

701—33.8(423) Out-of-state rental of vehicles subject to registration subsequently used in Iowa. If a vehicle is rented outside this state (such rental occurs when possession of the vehicle is transferred to a customer pursuant to a rental contract) and used within Iowa under the rental contract, rental payments are subject to Iowa use tax if those rental payments are made in Iowa at the termination of the rental agreement. See rule 701—30.7(423) regarding credit for taxes previously paid to another state.

EXAMPLE 1. Customer W signs a rental contract and takes possession of a rental car in Los Angeles. W drives the car to Des Moines and then pays a total charge for the rental of $300. This $300 payment is subject to Iowa use tax assuming that no tax was previously paid to another state.

EXAMPLE 2. Customer X rents and takes possession of a truck in Phoenix, Arizona. There customer X pays a $500 deposit to the rental agency. Rental of the truck is on a mileage and per-day basis. Customer X then drives the truck to Des Moines. The mileage and per-day charges add up to $600. Customer X pays the rental agency an additional $100. This $100 is subject to Iowa use tax.

701—33.9(423) Sales of mobile homes, manufactured housing, and related property and services.

33.9(1) *Sales of mobile homes, manufactured housing, and related property and services for one package price.* The following rule is applicable only to mobile homes and manufactured housing sold as tangible personal property rather than in the form of real property. If, at the time of the sale, a mobile home or manufactured housing is real property, this rule is not applicable to it. If a mobile home dealer buys a mobile home, incorporates that mobile home into real estate in the manner required by and

described in Iowa Code section 435.26, and then sells the mobile home to a consumer, the sale of that mobile home, the sale of any services used to transform the mobile home from tangible personal property to real property, and the sale of any tangible personal property with the mobile home (such as furniture) are governed by 701—Chapter 19 which deals with building contracts and building contractors. Sales of manufactured housing in the form of real estate are governed by rule 701—33.10(423).

When a customer purchases a mobile home or manufactured housing from a dealer, it is usually the customer's wish that the dealer prepare the mobile home or manufactured housing so that it is ready for the customer to move into it. To render a mobile home or manufactured housing "ready to move into" a dealer will sell, with the home or housing, certain tangible personal property and will also perform or arrange for other parties to perform various services.

With respect to any one particular mobile home or manufactured house which a dealer may sell, a dealer may provide any combination of the following services or provide the following services and sell the below-listed property to any person purchasing the home or house:

1. Connect the electricity.
2. Connect the water.
3. Connect sewer system lines.
4. Sell and install skirting. Skirting is used to fill the space between the bottom of the mobile home or manufactured house and the ground. It gives the home or house an appearance more like a conventional home because it covers up this space.
5. Build and install steps for a door.
6. Build a deck.
7. Do minor repair.
8. Install and sell a foundation upon which to place the mobile home or manufactured housing.
9. Sell furniture or appliances (e.g., air conditioners, refrigerators, and stoves) for use in the mobile home or manufactured housing. Install the appliance (e.g., an air conditioner) if necessary.

A dealer selling a mobile home or manufactured housing on a "ready-to-move-into" basis usually sells that home or housing and the services and additional property necessary to render them livable for one "package price." The dealer and customer do not bargain separately for the sale of the various articles of tangible personal property (e.g., the mobile home or manufactured house and appliances) or the services (e.g., electrical installation) which are part of this package price; nor is the dealer's package price broken down to indicate any of the expenses which are components of the package price either in the dealer's sales contract or on any sales invoice.

The package price of any one particular mobile home or manufactured house will vary depending upon how many services the dealer will provide, or how much tangible personal property the dealer will sell in addition to the home or house. In many cases, a dealer will contract with a third party to perform the services promised in the dealer's contract to a customer. For example, the dealer will contract with a third party to hook up the home or house purchaser's electricity, install window air conditioning or will contract with a third party to build a deck or perform minor repairs on the mobile home or manufactured house.

In the situation described above, the "purchase price" of a mobile home or manufactured house is the entire package price charged for the home or house, additional personal property for use in and around the home or house, and services performed to render the home or house livable. The entire amount of the package price, reduced by 40 percent as explained in rule 701—32.3(423), is used to calculate the amount of use tax due resulting from the sale of the mobile home or manufactured house. No part of the package price is subject to Iowa sales tax; rather it is subject to Iowa use tax.

33.9(2) *Sales of property and rendition of service under separate contract.* If the personal property and services listed in subrule 33.9(1) are purchased under separate contract and not as part of one package price with a mobile home or manufactured house, either from a mobile home dealer or from another party, the price paid for those items of property or services will not be a part of the purchase price of the home or house. Because the price of the property or services is not part of the "purchase price" of a home or house, that price will not be reduced by 40 percent, as required under rule 701—32.3(423), in computing

the use tax due upon the sale of a mobile home. Also, if sold in Iowa, the property would be subject to Iowa sales tax. The same is true of services rendered in Iowa.

If separately contracted for, the gross receipts from the following services sold are subject to Iowa sales tax under Iowa Code subsection 422.43(11):

a. Electrical hookup and air conditioning installation (electrical installation).

b. Water and sewer system hookup (plumbing).

c. Skirting installation and building and installation of steps and decks (carpentry).

d. Nearly all "minor repairs" would be taxable.

The sale, under separate contract, of skirting, steps, decks, furniture, appliances, and other tangible personal property to customers purchasing mobile homes or manufactured housing would be sales of tangible personal property, the gross receipts of which are subject to Iowa sales rather than use tax.

The installation of a concrete slab on which to place the mobile home or manufactured housing would not be a service taxable to the home or housing owner since this installation involves "new construction" and the service performed upon this new construction is thus exempt from tax. The person installing the concrete slab would be treated as a construction contractor and would pay sales tax upon any tangible personal property purchased and used in the construction of the slab.

33.9(3) *Dealer purchases of tangible personal property and services for resale.* Regardless of whether the tangible personal property and services connected with the purchase of a mobile home or manufactured housing have been purchased as part of a package price or whether their purchase has been separately contracted for, a dealer's or other retailer's purchase of the tangible personal property or service for subsequent resale to a mobile home or manufactured housing purchaser is a purchase "for resale" and thus exempt from Iowa sales or use tax.

701—33.10(423) Tax imposed on the use of manufactured housing as tangible personal property and as real estate. As of July 1, 1999, tax is imposed on the use of "manufactured housing" in Iowa. On and after that date the term "manufactured housing" or "manufactured home" is intended, generally, to replace the term "mobile home" when referring to prefabricated housing which is subject only to use tax and not to sales tax even though there are some differences in the law's treatment of mobile homes and manufactured housing.

33.10(1) *Definition.* "Manufactured housing" is basically housing which is factory built to specifications required by federal law (42 U.S.C. § 5403) and which is required by federal law to display a seal from the United States Department of Housing and Urban Development. It may be further characterized as (1) a structure built on a permanent chassis, (2) transportable in one or more sections, and (3) designed to be used as a dwelling with or without a permanent foundation. See the definition of "manufactured home" found in 24 Code of Federal Regulations § 3280.2 for additional characteristics of what is and is not "manufactured housing" for the purposes of Iowa use tax law.

33.10(2) *Tax treatment of manufactured housing which is similar to the tax treatment of mobile homes:*

a. Manufactured housing is subject only to Iowa use tax and not Iowa sales tax. The sale of manufactured housing in Iowa is defined by the applicable statute as a use of the housing in this state.

b. The use tax on manufactured housing is paid by the owner of the housing directly to the appropriate county treasurer. The law does not require any dealer or retailer in manufactured housing to collect use tax from a purchaser and remit the tax to any governmental body, although the law does not prevent a dealer from doing this as a courtesy to buyers.

c. Only 60 percent of the purchase price of either a mobile home or manufactured housing is subject to use tax. See rule 701—32.3(423). The use of manufactured housing previously subject to tax and upon which the tax has been paid is exempt from further tax.

d. The taxation of manufactured housing which is sold in the form of tangible personal property is similar to the taxation of mobile homes which are sold in the form of tangible personal property. See rule 701—33.9(423).

33.10(3) *Taxable use of manufactured housing in the form of real estate.* Unlike mobile homes, the use of which can be taxed only when the homes are in the form of tangible personal property, under

certain conditions, the use of manufactured housing in the form of real estate can be subject to tax. On and after July 1, 1999, if a developer has placed a manufactured home on a foundation in a lot in Iowa and hooked up the necessary utilities and completed the necessary landscaping to convert the home from tangible personal property to realty, the sale of the manufactured home to a user is a taxable use of the home on the user's part.

EXAMPLE. Alpha and Omega Development Corp. buys land with enough space for 100 lots for manufactured housing and for the streets necessary to provide access to the lots. Alpha and Omega then buys 100 manufactured houses. It lawfully buys these houses exempt from use tax based on the assertion that they have been purchased for subsequent resale. Alpha and Omega then develops the land, installing water, sewer and electric lines, placing the manufactured homes on foundations, and otherwise taking steps to convert the homes from tangible personal property to real estate.

Alpha and Omega then sells the homes on the lots to various customers. Each purchase of a home by a customer is a taxable use of the home on that customer's part, and the customer is obligated to pay the appropriate county treasurer the amount of Iowa use tax due.

a. When tax is due on the use of manufactured housing in the form of real estate, the basis for computing the tax is the "installed purchase price" of the manufactured housing. The "installed purchase price" is the amount charged by a building contractor to a homebuyer to convert manufactured housing from tangible personal property into real estate. Use tax is due on 60 percent of the amount of the installed purchase price. See rule 701—32.3(423).

b. Included within the meaning of the term "installed purchase price" are amounts charged to a buyer of a manufactured home to build and install a foundation on which to place a home; amounts charged to hook up electric, water, gas, sewer system, and other lines for necessary utilities; amounts charged to sell and install "skirting" (see subrule 33.9(1)); amounts charged to build and install any steps for a door; and amounts separately charged for any appliances or other items which become a part of the housing after installation, e.g., dishwashers and whirlpool tubs.

c. Excluded from the meaning of the term "installed purchase price" is any amount charged for the purchase of land on which to place a manufactured house; any amount charged for landscaping in connection with the installation of a manufactured house; any amount charged to build and install any deck or similar appurtenance to a manufactured home; and any amounts charged for the sale of furniture or appliances which remain tangible personal property after installation, e.g., furniture, room air conditioners, and refrigerators. This list of inclusions and exclusions is not exclusive. Furthermore, the purchase of furniture or appliances which remain tangible personal property is subject to Iowa sales or use tax, including consumers' use tax.

d. The exemption in favor of taxable services performed on or in connection with new construction (see rule 701—19.13(422,423)) is not applicable when calculating the amount of any installed purchase price.

This rule is intended to implement Iowa Code sections 423.1, 423.2, 423.4, 423.6, and 423.7 as amended by 1999 Iowa Acts, chapter 188.

These rules are intended to implement Iowa Code sections 422.45(2), 422.45(18), 423.1(3), 423.2, 423.4(4) and Iowa Code section 423.4(12) as amended by 1999 Iowa Acts, chapter 188.

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CHAPTER 34
VEHICLES SUBJECT TO REGISTRATION
[Prior to 12/17/86, Revenue Department[730]]

701—34.1(422,423) Definitions.

34.1(1) A *"vehicle subject to registration"* shall mean any vehicle subject to registration pursuant to Iowa Code section 321.18. This includes every motor vehicle, trailer and semitrailer when driven or moved upon a highway with certain exceptions as stated in Iowa Code section 321.18. This also includes new and used motor vehicles for the purpose of the administration of Iowa Code chapters 422 and 423; a modular home shall not be considered a vehicle subject to registration, but rather a modular home shall be subject to the provisions of Iowa Code chapters 422 and 423 pertaining to sales and use tax on sales of tangible personal property.

34.1(2) *"Dealers"* shall be persons licensed to sell vehicles subject to registration.

34.1(3) *"Taxable price"* shall be the total delivered price of the vehicle less cash discounts, trade-in allowances, fees imposed by the dealer for document processing, commonly known as "doc fees," and any manufacturer's cash rebate to a purchaser which is applied to the purchase price of a vehicle. The total delivered price shall include all accessories, additional equipment, services, freight and manufacturer's tax, valued in money, whether paid in money or otherwise. Gasoline, separately itemized, shall not be subject to use tax.

34.1(4) *Taxable moment.* Rescinded IAB 9/4/91, effective 10/9/91.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 423.1(1), 423.2, 423.4(4) and 423.7.

701—34.2(423) County treasurer shall collect tax. It shall be the duty of the county treasurer to collect use tax, when applicable, on vehicles subject to registration. The departmental rules adopted shall apply in the collection of use tax on vehicles subject to registration registered in their respective counties.

701—34.3(423) Returned vehicles and tax refunded by manufacturers. When a vehicle subject to registration is sold and later returned to the seller with the entire purchase price refunded, the purchaser is entitled to a refund of the use tax paid. To obtain a refund the purchaser must be able to show that the entire purchase price was returned and provide proof that the use tax had been paid. See rule 701—30.11(423) for details on claims for refund.

If a vehicle manufacturer has refunded to any purchaser, lessee, or lessor of a vehicle any amount required to be refunded by Iowa Code chapter 322G (Lemon Law), and a portion of that refund is use tax paid by the purchaser, lessee, or lessor, then the department shall refund to the manufacturer the amount of use tax which the manufacturer has refunded to the purchaser, lessee, or lessor. The manufacturer must send the department a written request for a refund, which contains adequate proof that the tax was paid when the vehicle was purchased and that the manufacturer refunded the tax to the purchaser, lessee, or lessor who paid it.

This rule is intended to implement Iowa Code sections 322G.4(2), 423.1, and 423.7.

701—34.4(423) Use tax collections required. The county treasurer or state motor vehicle registration division shall, before issuing a registration for a vehicle subject to registration, collect use tax due. The issuing office shall remit the tax in its monthly report to the department unless requirements for electronic transmission of remittances and related information specify otherwise.

For reports for months starting on or after April 1, 1990, remittances are to be made electronically in a format and by means specified by the department of revenue. Monthly reports are to be made separately from electronic transmission of the remittance. Remittances transmitted electronically are considered to have been made on the date that the remittance is added to the bank account designated by the treasurer of the state of Iowa. The filing of a monthly report and the remittance of the tax are simultaneous acts both of which shall occur for either condition to be met.

This rule is intended to implement Iowa Code section 423.7.

701—34.5(423) Exemptions. An affidavit of exemption may be required if there is reason to believe that the exemption being requested is not within the provisions of one of the exemptions set forth by law or it is believed that the person requesting the exemption will not use the vehicle for one of the exempt purposes. The burden of proof whether an exemption applies shall be upon the person claiming the exemption.

An original registration in Iowa may be issued for a vehicle subject to registration without the collection of use tax only in the following situations, unless exceptions are noted:

34.5(1) When the applicant for an Iowa registration for a vehicle subject to registration has paid to another state a state sales, use or occupational tax on that unit, credit shall be allowed against the Iowa tax due in the amount paid. Credit shall not be allowed when such tax is paid upon equipment rental receipts. If tax paid is equal to or greater than the Iowa tax due, no further tax shall be collected. If tax paid is less than the Iowa tax due, the difference shall be collected by Iowa.

34.5(2) When the consumer applies for registration of a "homemade vehicle subject to registration" built from parts purchased at retail, upon which the consumer paid a tax to the seller, and never before registered. The term "homemade vehicle subject to registration" shall include such things as homemade automobiles, trucks, trailers, motorcycles and motorbikes, but shall not include those vehicles subject to registration which are made by a manufacturer engaged in the business for the purpose of sales or rental.

34.5(3) When a nonresident of Iowa applies for a "nonresident-in-transit" registration for a motor vehicle purchased in Iowa but which the person intends to permanently register in a state other than Iowa.

34.5(4) When vehicles are purchased by any federal or state governmental agency or tax-certifying or tax-levying body of Iowa or governmental subdivision thereof. The exemption shall not apply to vehicles purchased and used in connection with the operation of or by a municipally owned public utility engaged in selling gas, electricity or heat to the general public and, therefore, shall be subject to use tax.

34.5(5) When the purchaser of a vehicle subject to registration in Iowa remits use tax on the taxable price, then moves the vehicle to a foreign state where it is registered in that state and subsequently returns the same vehicle to Iowa where it is again registered. The same purchaser shall have maintained ownership of the vehicle throughout the respective moves from and back to Iowa.

34.5(6) When a vehicle subject to registration is inherited, the county treasurer may require the registrant to set forth the facts before such exemption is granted.

34.5(7) When an applicant for an Iowa registration has moved from another state with intent of changing residency to Iowa and if the vehicle subject to registration was purchased for use in the state from which the applicant moved and was not, at or near the time of such purchase, purchased for use in Iowa.

34.5(8) Vehicles purchased for lease and used outside the state of Iowa. When certain vehicles defined as "motor trucks, truck tractors, road tractors, trailers, or semitrailers" in Iowa Code section 321.1, except vehicles designed primarily for carrying persons, are purchased for the purpose of leasing to a lessee for use outside the state of Iowa, and actually leased to a lessee for use outside Iowa, such vehicles shall be exempt from use tax provided the subsequent sole use in Iowa is in interstate transportation or interstate commerce.

Should a "use," as defined in Iowa Code subsection 423.1(1) occur in Iowa, subsequent to the leasing to a lessee outside the flow of interstate transportation or interstate commerce, use tax would be owing. The tax, if found to be due, shall be computed on the purchase price.

The tax, if due, shall be paid on or before the last day of the month following the close of the quarter in which a "use" in Iowa, outside the flow of interstate transportation or interstate commerce, did occur. The tax should be paid directly to the Iowa department of revenue.

34.5(9) Vehicles which are transferred from a business which was a sole proprietorship or partnership to a corporation for the purpose of continuing the business if all of the stock of the corporation is owned by the sole proprietor and the sole proprietor's spouse or by all the partners if the business was a partnership are exempt from tax. This exemption is also applicable if vehicles are transferred from a corporation to a sole proprietorship or partnership formed for the purpose of continuing the business when carried on by the same person or persons who were stockholders of the corporation.

a. This exemption contains the following provisions:

(1) If the business transferring the vehicle is a sole proprietorship or partnership, the vehicle must be transferred to a new corporation. For the purposes of this subrule, a corporation is a "new" corporation if, at the time of transfer, the corporation has been incorporated for one calendar year or less.

(2) The new corporation must have been formed for the purpose of continuing the business of the sole proprietorship or partnership. The activities of the new corporation must, therefore, be the same as the sole proprietorship or the partnership.

(3) The new corporation must be owned 100 percent by the sole proprietor, the sole proprietor's spouse or all the partners, in the case of a partnership, which is transferring the vehicle.

(4) The exemption is equally available when vehicles are transferred from a corporation to a sole proprietorship or to a partnership.

(5) In such cases, the newly formed sole proprietorship or partnership must have been formed to continue the business of the corporation. Therefore, the activities of the new entity must be the same as the corporation.

(6) The new sole proprietorship or partnership must have owned all the stock in the transferring corporation when the corporation existed.

b. Effective July 1, 2001, this exemption is also applicable to transfers to and from limited liability companies. The rules regarding transfers to a "new" corporation are also applicable to a transfer to a limited liability company. In addition, for a limited liability company to claim the exemption, the creation of the limited liability company must be by the same person or persons who owned the transferor entity.

c. Effective May 30, 2003, the gross receipts from the transfer of a vehicle subject to registration from one corporation to another corporation are exempt if the following two criteria are met:

(1) The corporations involved in the transfer must be primarily engaged in the business of leasing vehicles subject to registration; and

(2) The corporations are part of the same controlled group for federal income tax purposes.

34.5(10) Purchases of vehicles subject to registration by persons who will rebuild those vehicles into ambulances, rescue, or fire vehicles (as defined in Iowa Code chapter 321) are exempt from tax. These purchases are exempt only if the person purchasing the vehicle for rebuilding into an ambulance, rescue, or fire vehicle is a licensed wholesaler of new motor vehicles. This exemption is applicable only to purchases of vehicles which will be rebuilt into ambulances, rescue, or fire vehicles.

34.5(11) Purchases of vehicles by a licensed vehicle recycler under Iowa Code chapter 321H are exempt from tax. These purchases are exempt as long as the recycler sells only those parts or vehicles for which the recycler is licensed.

34.5(12) Purchase of vehicles by a person regularly engaged in the business of renting vehicles or a vehicle that is registered and titled for rental use by a motor vehicle dealer licensed under Iowa Code chapter 322 for the purpose of short-term automobile rental (see Iowa Code chapter 27) or, effective January 1, 1997, vehicles subject to registration purchased for a long-term vehicle lease of 12 months or more and titled by a lessor licensed pursuant to Iowa Code chapter 321 (see 701—rules 31.5(423) and 32.11(423)).

This rule is intended to implement Iowa Code sections 422.45(5), 423.4(4), 423.4(9) and 423.4(16) and 2003 Iowa Acts, chapter 179, section 127.

701—34.6(423) Vehicles subject to registration received as gifts or prizes. Persons receiving motor vehicles subject to registration as gifts or prizes are not obligated to pay use tax on the purchase price of those vehicles.

This rule is intended to implement Iowa Code sections 423.1(2) and 423.2.

701—34.7(423) Titling of used foreign vehicles by dealers. Licensed auto dealers shall not be required under the motor vehicle "title" law to register used foreign motor vehicles but shall be required to secure a title for such units by remitting required fees and submitting a completed application for title to the county treasurer of the dealer's residence within 15 days of the vehicle's arrival in this state. When applying for a title on such foreign-used vehicles, dealers shall execute and file a dealer's resale affidavit,

in duplicate, with the office issuing the title. The original shall be forwarded to the department along with the monthly use tax report, and the copy shall be retained by the issuing office.

If a dealer acquires a vehicle registered in another state which allows for reciprocity for Iowa vehicle registrations and titles, by allowing Iowa dealers to assign that state's certificates of title and registrations, the dealer is not required to obtain a new registration or a new certificate of title. Instead, the Iowa dealer need only assign the foreign state's certificate of title or registration to another person to effectuate a transfer of the vehicle.

This rule is intended to implement Iowa code sections 423.1(15) and 423.10.

701—34.8(423) Dealer's retail sales tax returns. Sales of new or used motor vehicles and trailers, as defined, are expressly exempt from sales tax, as the law imposes use tax on new or used motor vehicles and trailers. If the dealer holds a sales tax permit, the dealer shall include on the sales tax return the gross receipts from sales of new or used motor vehicles and trailers and then take appropriate deductions in the section provided on the return.

701—34.9(423) Affidavit forms. Forms of affidavit required to establish purchase price, lease price, or exemption shall be furnished by the department and shall be available upon request.

The affidavit for the total delivered purchase price or lease price of a motor vehicle or trailer shall be established by the application for certificate of title and registration and a manufacturer's statement of origin. Before a motor vehicle or trailer, purchased outside the state, is registered, the county treasurer must be satisfied that the information stated in the affidavit is true and correct.

Affidavits of exemption which are not correct in both substance and form shall not be accepted by the county treasurer, the motor vehicle division or the department in lieu of use tax. In case of doubt, the county treasurer or motor vehicle division shall collect tax. Claim for refund may be filed by the taxpayer if the taxpayer believes tax has been erroneously collected.

Rules 34.1(422,423) to 34.9(423) are intended to implement Iowa Code chapter 423 and Iowa Code section 423.7A as amended by 1996 Iowa Acts, chapter 1125.

701—34.10(423) Exempt and taxable purchases of vehicles for taxable rental. If a vehicle subject to registration is purchased for rental, and the gross receipts from that rental will be taxable, the purchase price of this vehicle is not exempt from use tax except under the circumstances set out in rules 701—32.11(423) and 32.12(423).

The purchase for rental is not a purchase of tangible personal property for resale because a lease or rental of tangible personal property is not a sale: *Cedar Valley Leasing, Inc. v. Iowa Department of Revenue,* 274 N.W.2d 357 (Iowa 1979); and the exemption allowed from tax for the use in Iowa of tangible personal property to be rented is not applicable to the use tax on motor vehicles because excluded from that exemption are vehicles subject to registration. See Iowa Code sections 422.45(18), 423.4(4), 423.4(14), 423.4(15), and 423.4(16).

This rule is intended to implement Iowa Code sections 422.45(2), 422.45(18), 423.4(4), and 423.4(16) as amended by 1996 Iowa Acts, chapter 1125, and Iowa Code chapter 422C.

701—34.11(423) Manufacturer's refund of use tax to a consumer, lessor, or lessee of a defective motor vehicle. The department shall refund to a motor vehicle manufacturer any Iowa use tax which the manufacturer has refunded to a consumer, lessee, or lessor of a defective motor vehicle as required by Iowa Code section 322G.4, if the manufacturer presents a written request for refund and suitable proof that the use tax was paid at the time of purchase or lease and that the manufacturer refunded the use tax paid. Suitable proof of payment at time of purchase is a copy of a title showing payment of the use tax.

This rule is intended to implement Iowa Code section 322G.4.

701—34.12(423) Government payments for a motor vehicle which do not involve government purchases of the same. If a dealer or other seller transfers title to a vehicle under a contract of sale to a buyer, payment by a government of all or part of the purchase price of the vehicle is not a sale of that

vehicle to the government making the payment, and the entire purchase price of the vehicle is subject to use tax.

EXAMPLE: A disabled veteran is purchasing a van. The veteran makes an application with the Veterans Administration (V.A.) to help purchase the van for $30,695. The application is approved and the V.A. prepares a check for $12,456. The check is paid to the order of the seller of the van. It is also the usual custom for a veteran to apply for a grant to pay some or all of the remainder of the price. If this grant is approved, a check is issued in the name of the veteran. The veteran then either assigns the check to the dealer or deposits the check and writes a personal check to the dealer for the remaining amount due. Under these circumstances, the van is sold to the veteran and not the U.S. government. The purchase price upon which tax is computed is $30,695.

This rule is intended to implement Iowa Code section 423.7.

701—34.13(423) Transfers of vehicles resulting from corporate mergers and other types of corporate transfers. Corporate mergers often involve the transfer of title to large numbers of vehicles from a merging corporation to a surviving corporation. These transfers generally do not involve the "purchase" of these vehicles, though other transfers of vehicles between corporations may involve purchases of vehicles and thus be subject to use tax. See rule 701—15.20(422,423) for examples of property transfers between corporations which involve mergers without purchases and those nonmerger transactions which involve purchases or transfers that may result in an obligation to pay use tax.

701—34.14(423) Refund of use tax paid on the purchase of a motor vehicle. If, as the result of an error, use tax had been paid which was not due under Iowa Code chapter 423, the use tax paid can be refunded to the purchaser. A claim for refund must be filed with the department within three years after the tax payment became due, or one year after the payment of tax was made, whichever is later.

This rule is intended to implement Iowa Code section 423.23.

701—34.15(423) Registration by manufacturers. Use tax on a vehicle registered in Iowa by the manufacturer of that vehicle from an MSO (manufacturer's statement of origin) is calculated on the base value of 50 percent of the retail list price of the vehicle because such a manufacturer is required to pay use tax only on the manufacturer's cost of materials used to manufacture the vehicle. However, it is important to note that this 50 percent exemption is provided only to manufacturers of the vehicle; it is not extended to subsidiaries of the manufacturer. A subsidiary of a manufacturer is required to pay Iowa use tax on 100 percent of that subsidiary's purchase price of the vehicle at the time of the registration of the vehicle.

This rule is intended to implement Iowa Code section 423.2.

701—34.16(423) Rebates. Manufacturer's rebates can be used to reduce the taxable purchase price of a vehicle.

34.16(1) To qualify as a manufacturer's rebate for the reduction in the taxable price, all of the following elements must be present:

a. A rebate must be a return to the purchaser of an amount that the purchaser would otherwise have paid;

b. The rebate must be in the form of cash;

c. The rebate must be offered by a manufacturer which is any person or entity that fabricates, assembles, or combines materials and parts to create a vehicle subject to registration in Iowa;

d. The rebate must be given as part of a transaction between the manufacturer and the purchaser and must meet both of the following:

(1) The rebate must originate from an entity acting in the capacity of a manufacturer of such vehicles when the rebate is offered. The rebate cannot be offered by a vehicle manufacturer engaging in other activities, such as a manufacturer acting in the capacity of a credit card issuer or a financing program;

(2) The purchaser must be in the process of purchasing the vehicle at the time the rebate is given. The rebate cannot be given to a customer in a situation similar to the credit card rebate program, in which the customer earns the right to the rebate over a period of time. Purchase of the vehicle must occur simultaneously with the receipt of the rebate, and the rebate cannot be allowed unless the customer purchases the vehicle; and

e. The rebate must be applied to the base purchase price of the vehicle.

34.16(2) Reserved.

This rule is intended to implement Iowa Code section 423.1(8).

701—34.17(321,423) Repossession of a vehicle. A vehicle may be taken from a purchaser by the holder of the security interest in the vehicle or someone acting on the holder's interest, if the purchaser defaults on the terms of the purchase agreement. To be recognized as valid for use tax purposes, the repossession must be regulated under the terms of the Uniform Commercial Code and there must be a valid lien on the title of the vehicle. To be recognized as valid for use tax purposes, repossession of a vehicle can be made by dealers, by financial institutions, and by individuals. The taxable result of repossession depends on the identity of the person doing the repossessing and the manner in which the person doing the repossessing conducts the transaction.

34.17(1) *Licensed vehicle dealer.* If a licensed vehicle dealer repossesses a vehicle and anticipates reselling the vehicle, then the dealer can use the dealer's resale exemption, and no use tax is due at the time of the registration of the vehicle by the dealer.

34.17(2) *Financial institution or private individual.* A financial institution or a private individual may be a licensed dealer entitled to receive an exemption from use tax based on the dealer's license when registering a repossessed vehicle. Repossessions of vehicles that will be resold by a financial institution or an individual that does not have a dealer's license can be effectuated using a foreclosure affidavit. Use tax liabilities which arise as a result of such affidavits are as follows:

a. If the financial institution or individual uses the foreclosure affidavit to take title to the vehicle and register the vehicle, use tax is due based on the outstanding loan amount on the vehicle.

b. If the foreclosure affidavit is used merely to retain possession of the vehicle until a buyer is found, no tax is due on the repossession. No tax is due because a transfer of title does not occur.

Use tax liabilities which arise as a result of repossessions of mobile homes are handled in the same manner as vehicles.

This rule is intended to implement Iowa Code sections 321.48 and 423.2.

701—34.18(423) Federal excise tax. There are many types of federal excise taxes. The type of tax and time in which the federal excise tax is imposed determine if the federal tax is to be included in the taxable sales price for Iowa tax purposes. Federal excise tax imposed on manufacturers rather than at the time of the sale may not be deducted from the sale price. Instead, this type of federal excise tax remains as part of the taxable price for the purpose of computing Iowa tax. Another type of federal excise tax is imposed at the time of the sale. Federal luxury tax is imposed at the time of the sale of certain vehicles, trucks, buses, trailers, chassis, bodies, and parts and is to be collected by the retailer and remitted directly to the Internal Revenue Service. Federal excise tax which is imposed at the time of sale is excluded from the sale price for the purpose of computing Iowa tax. However, to be excluded from the sale price for the purpose of computing Iowa tax, this type of federal tax must be separately billed or itemized.

This rule is intended to implement Iowa Code section 423.1(8).

701—34.19(423) Claiming an exemption from Iowa tax. Tax on the taxable transfer of a vehicle is due and owing to the county treasurer at the time the vehicle is registered. If the purchase of the vehicle is not subject to tax, the county treasurer has the discretion to require the owner of the vehicle to complete an affidavit form setting forth the basis for exemption. The burden of proof that an exemption is proper is upon the person claiming the exemption.

This rule is intended to implement Iowa Code section 423.4.

701—34.20(423) Affidavit forms. Affidavit forms are used to establish purchase price or exemption. These forms are furnished by the department and are available upon request. The total delivered purchase price of a vehicle or trailer is established by the application for certificate of title and registration and a manufacturer's statement of origin (MSO). Before a vehicle or trailer that has been purchased outside of Iowa can be registered, the county treasurer must be satisfied that the information stated in the affidavit is accurate.

Affidavits of exemption which are not correct in substance and form will not be accepted in lieu of use tax by the county treasurer, department of transportation (DOT), motor vehicle division, or the department of revenue. When a claimed exemption is in doubt, the county treasurer or DOT will collect the tax. Claims for refund of tax may be filed by a taxpayer if the taxpayer believes the tax was collected in error. See 701—34.14(423) for information on refunds.

This rule is intended to implement Iowa Code section 423.4.

701—34.21(423) Insurance companies. Insurance companies title and register vehicles when vehicles are damaged to the extent of being a total loss. Generally, in this type of transaction, the insurance company pays the insured for the vehicle that is totally damaged and, subsequently, the insurance company takes title to the damaged vehicle. In this situation, there is a transfer of the vehicle title from the insured to the insurance company for consideration (money paid by the insurance company to the insured for the totaled vehicle). Accordingly, Iowa use tax is due on the vehicle when the insurance company titles the vehicle. However, insurance companies are entitled to obtain a limited vehicle dealer's license for the purchase of damaged or repossessed vehicles (see 701— 34.17(423) regarding repossession). If an insurance company has a dealer's license, then the dealer may purchase and register the vehicle without being required to pay Iowa use tax on the vehicle.

This rule is intended to implement Iowa Code section 423.21.

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CHAPTERS 35 and 36
Reserved

CHAPTER 37
UNDERGROUND STORAGE TANK RULES INCORPORATED BY REFERENCE

701—37.1(424) Rules incorporated. Rules in 591—Chapters 5 and 6 of Iowa comprehensive petroleum underground storage tank fund board (UST board) are incorporated with this reference into the rules of the department of revenue.

This rule is intended to implement Iowa Code chapter 424.

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TITLE V
INDIVIDUAL

CHAPTER 38
ADMINISTRATION

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

701—38.1(422) Definitions.

38.1(1) When the word *"department"* appears herein, the word refers to and is synonymous with the "Iowa department of revenue"; the word *"director"* is the "director of revenue" or the director's authorized assistants and employees.

The administration of the individual income tax is a responsibility of the department. The department is charged with the administration of the individual income tax, fiduciary tax, withholding of tax and individual estimate declarations, subject always to the rules, regulations and direction of the director.

38.1(2) The term *"computed tax"* means the amount of tax remaining before deductions of the personal exemption credit and other credits in Iowa Code chapter 422, division II, and before the computation of the school district surtax and the emergency medical services income surtax.

38.1(3) The word *"taxpayer"* includes under this division:

a. Every resident of the state of Iowa.

b. Every part-year resident of the state of Iowa.

c. Every estate and trust resident of this state whose income is in whole or in part subject to the state income tax.

d. Nonresident individuals, estates and trusts (those with a situs outside of Iowa) receiving taxable income from property in Iowa or from business, trade, or profession or occupation carried on in this state.

38.1(4) The term *"fiduciary"* shall mean one who acts in place of or for the benefit of another in accordance with the meaning of the term defined in Iowa Code section 422.4. The term includes, but is not limited to, the executor or administrator of an estate, a trustee, guardian or conservator, or a receiver.

38.1(5) The term *"employer"* means those who have a right to exercise control as to the performance of services as defined in Iowa Code section 422.4.

38.1(6) The term *"employee"* means and includes every individual who is a resident, or who is domiciled in Iowa, or any nonresident, or corporation performing services within the state of Iowa, the performance of which services constitutes, establishes, and determines the relationship between the parties as that of employer and employee. This includes officers of corporations, individuals, including elected officials performing services for the United States government or any agency or instrumentality thereof, or the state of Iowa, or any county, city, municipality or political subdivision thereof.

38.1(7) The term *"wages"* means any remuneration for services performed by an employee for an employer, including the cash value of all such remuneration paid in any medium or form other than cash. Wages have the same meaning as provided by the Internal Revenue Code as made applicable to Iowa income tax.

Wages subject to Iowa income tax withholding consist of all remuneration, whether in cash or other form, paid to an employee for services performed for the employer. For this purpose, the word "wages" includes all types of employee compensation, such as salaries, fees, bonuses, and commissions. It is immaterial whether payments are based on the hour, day, week, month, year or on a piecework or percentage plan.

Wages paid in any form other than money are measured by the fair market value of the goods, lodging, meals, or other consideration given in payment for services.

Where wages are paid in property other than money, the employer should make necessary arrangements to ensure that the tax is available for payment. Vacation allowances and back pay, including retroactive wage increases, are taxed as ordinary wages.

Tips or gratuities paid directly to an employee by a customer and not accounted for to the employer are not subject to withholding. However, the recipients must include them in their personal income tax returns.

Amounts paid specifically, either as advances or reimbursements, for traveling or other bona fide ordinary and necessary expenses incurred or reasonably expected to be incurred in the business of the employer are not wages and are not subject to these taxes. Traveling and other reimbursed expenses must be identified either by making a separate payment or by specifically indicating the separate amounts where both wages and expense allowance are combined in a single payment.

Wages are to be considered as paid when they are actually paid or when they are constructively paid, that is, when they are credited to the account of, or set apart for the wage earner so that they may be drawn upon by the wage earner at any time, although not then actually reduced to possession.

38.1(8) The term *"responsible party"* shall have the same meaning as withholding agent as defined in Iowa Code section 422.4. A withholding agent includes an officer or employee of a corporation or association, or a member or employee of a partnership, who has the responsibility to perform acts covered by Iowa Code section 422.16. As of July 1, 1993, withholding agent also includes a member or a manager of a limited liability company who has the responsibility to perform acts covered by Iowa Code section 422.16 as amended by 1994 Iowa Acts, Senate File 2057. An individual who is a "responsible party" by law cannot shift that responsibility to someone else by attempting to delegate the responsibility to another corporate officer or employee.

Every business which is an employer must have some person who has the duty of withholding and paying those taxes which the law requires an employer to withhold and pay. There may be more than one person, but there must be at least one. The fact that any individual may not have been the only responsible person would not excuse that person from the responsibility of paying withholding taxes. Any withholding agent as defined in this subrule, who knowingly violates the statutory provisions of Iowa Code section 422.16, will be held liable for the tax due: *Pacific National Insurance Co. v. United States,* 1970, 9th Cir., 422 F.2d 26, cert. denied, 398 U.S. 937; *R. E. Dougherty v. United States,* 1971, 327 F. Supp. 202; *Gefen v. United States,* 5th Cir. 1968, 400 F.2d 476.

38.1(9) *Domicile.* Rescinded IAB 5/10/95, effective 6/14/95.

This rule is intended to implement Iowa Code sections 422.3, 422.4 and 422.16.

701—38.2(422) Statute of limitations.

38.2(1) *Periods of audit.*

a. The department has three years after a return has been filed or three years after the return became due, including any extensions of time for filing, whichever time is the later, to determine whether any additional tax other than that shown on the return is due and owing. This three-year statute of limitations does not apply in the instances specified in paragraphs *"b," "c," "d," "e," "f"* and *"g."*

b. If a taxpayer fails to include in the taxpayer's return items of gross income as defined in the Internal Revenue Code as amended, as will under that Code extend the statute of limitations for federal tax purposes to six years, the correct amount of tax due may be determined by the department within six years from the time the return is filed, or within six years after the return became due, including any extensions of time for filing, whichever time is the later.

c. If a taxpayer files a false or fraudulent return with intent to evade tax, the correct amount of tax due may be determined by the department at any time after the return has been filed.

d. If a taxpayer fails to file a return, the periods of limitations so specified in Iowa Code section 422.25 do not begin to run until the return is filed with the department.

e. While the burden of proof of additional tax owing under the six-year period or the unlimited period is upon the department, a prima facie case of omission of income, or of making a false or fraudulent return, shall be made upon a showing of a federal audit of the same income, a determination by federal authorities that the taxpayer omitted items of gross income or made a false or fraudulent return, and the payment by the taxpayer of the amount claimed by the federal government to be the correct tax or the admission by the taxpayer to the federal government of liability for that amount.

f. In addition to the periods of limitation set forth in paragraph *"a," "b," "c," "d,"* or *"e,"* the department has six months after notification by the taxpayer of the final disposition of any matter between the taxpayer and the Internal Revenue Service with respect to any particular tax year to make an examination and determination. Final disposition of any matter between the taxpayer and

the Internal Revenue Service triggers the extension of the statute of limitations for the department to make an examination and determination, and the extension runs until six months after the department receives notification and a copy of the federal document showing the final disposition or final federal adjustments from the taxpayer. *Van Dyke v. Iowa Department of Revenue and Finance,* 547 N.W.2d 1. This examination and determination is limited to those matters between the taxpayer and the Internal Revenue Service which affect Iowa taxable income. *Kelly-Springfield Tire Co. v. Iowa State Board of Tax Review,* 414 N.W.2d 113 (Iowa 1987). The notification shall be in writing in any form sufficient to inform the department of final disposition, and attached to the notification shall be a photo reproduction or carbon copy of the federal document which shows the final disposition and any schedules necessary to explain the federal adjustments. The notification and copy of the federal document shall be mailed, under separate cover, to the Examination Section, Compliance Division, P.O. Box 10456, Des Moines, Iowa 50306. Any notification and copy of the federal document which is included in, made a part of, or mailed with a current year Iowa individual income tax return will not be considered as proper notification for the purposes of beginning the running of the six-month period.

g. In lieu of the period of limitation for any prior year for which an overpayment of tax or an elimination or reduction of an underpayment of tax due for that prior year results from the carryback to such prior year of a net operating loss or net capital loss, the period shall be the period of limitation for the taxable year of the net operating loss or net capital loss which results in such carryback.

38.2(2) *Waiver of statute of limitations.* When the taxpayer and the department enter into an agreement to extend the period of limitation, interest continues to accrue on any deficiency or overpayment during the period of the waiver. The taxpayer may claim a refund during the period of the waiver.

38.2(3) *Amended returns filed within 60 days of the expiration of the statute of limitations for assessment.* If a taxpayer files an amended return on or after April 1, 1995, within 60 days prior to the expiration of the statute of limitations for assessment, the department has 60 days from the date the amended return is received to issue an assessment for applicable tax, interest, or penalty.

This rule is intended to implement Iowa Code section 422.25.

701—38.3(422) Retention of records.

38.3(1) Every individual subject to the tax imposed by Iowa Code section 422.5 (whether or not the individual incurs liability for the tax) and every withholding agent subject to the provisions of Iowa Code section 422.16 shall retain those books and records as required by Section 6001 of the Internal Revenue Code and federal income tax regulation 1.6001-1(e) including the federal income tax return and all supporting federal schedules. For taxpayers using an electronic data interchange process or technology also see 701—subrule 11.4(4).

38.3(2) In addition, records relating to other deductions or additions to federal adjusted income shall be retained so long as the contents may be material in the administration of the Iowa Code under the statutes of limitations for audit specified in section 422.25.

This rule is intended to implement Iowa Code sections 422.25 and 422.70.

701—38.4(422) Authority for deductions. Whether and to what extent deductions shall be allowed depends upon specific legislative acts, and only where there is a clear provision can any particular deduction be allowed. Therefore, a deduction will be allowed only if the taxpayer can establish the validity and correctness of such deduction.

This rule is intended to implement Iowa Code sections 422.7 and 422.9.

701—38.5(422) Jeopardy assessments.

38.5(1) A jeopardy assessment may be made in a case where a return has been filed, and the director believes for any reason that collection of the tax will be jeopardized by delay; or in a case where a taxpayer fails to file a return, whether or not formally called upon to do so, in which case the department is authorized to estimate the income of the taxpayer upon the basis of available information, and to add penalty and interest.

38.5(2) A jeopardy assessment is due and payable when the notice of the assessment is served upon the taxpayer. Proceedings to enforce the payment of the assessment by seizure or sale of any property of the taxpayer may be instituted immediately.

This rule is intended to implement Iowa Code section 422.30.

701—38.6(422) Information deemed confidential. Iowa Code sections 422.20 and 422.72 apply generally to the director, deputies, auditors, agents, present or former officers and employees of the department. Disclosure of information from a taxpayer's filed return or report or other confidential state information by department of revenue personnel to a third person is prohibited under the above sections. Other persons having acquired information disclosed in a taxpayer's filed return or report or other confidential state information will be bound by the same rules of secrecy under these sections as any member of the department and will be subject to the same penalties for violations as provided by law. See rule 701—6.3(17A).

This rule is intended to implement Iowa Code sections 422.16, 422.20, and 422.72.

701—38.7(422) Power of attorney. For information regarding power of attorney, see rule 701—7.34(421) and 7.38(421,17A).

701—38.8(422) Delegations to audit and examine. Pursuant to statutory authority, the director delegates to authorized assistants and employees the power to examine returns and make audits; and to determine the correct amount of tax due, subject to review by or appeal to the director.

This rule is intended to implement Iowa Code section 422.70.

701—38.9(422) Bonding procedure. The director may, when necessary and advisable in order to secure the collection of the tax required to be deducted and withheld or the amount actually deducted, whichever is greater, require an employer or withholding agent to file with the director a bond issued by a surety company authorized to conduct business in Iowa and approved by the insurance commissioner as to solvency and responsibility in an amount the director may fix, or in lieu of bond, securities approved by the director in an amount the director may prescribe and keep in the custody of the department. Pursuant to the statutory authorization in Iowa Code section 422.16, the director has determined that the following procedures will be instituted with regard to bonds. However, the bonding procedures were applicable only to nonresident employers or withholding agents for withholding taxes due prior to January 1, 1987. The penalty for failure of a withholding agent to file a bond, described in subrule 38.9(4) applies to taxes required to be withheld on or after January 1, 1990.

38.9(1) *When required.*

a. New applications by withholding agents. A new withholding agent applicant will be requested to post a bond or security if (1) it is determined upon a complete investigation of the applicant's financial status that the applicant would be unable to timely remit the tax, or (2) the new applicant held a withholding agent's identification number for a prior business and the remittance record of the tax under the prior identification number falls within one of the conditions in paragraph *"b"* below, or (3) the department experienced collection problems while the applicant was engaged in business under the prior identification number.

b. Existing withholding agents. Existing withholding agents shall be requested to post a bond or security when they have had two or more delinquencies in remitting the withholding tax during the last 24 months if filing returns on a quarterly basis or have had four or more delinquencies during the last 24 months if filing returns on a monthly basis. The simultaneous late filing of the return and the late payment of the tax will count as one delinquency. However, the late filing of the return or the late payment of the tax will not count as a delinquency if the withholding agent can satisfy one of the conditions set forth in Iowa Code section 421.27.

c. Waiver of bond. If a withholding agent has been requested to post a bond or security or if a withholding agent applicant has been requested to post a bond or security, upon the filing of the bond or

security, if the withholding agent maintains a good filing record for a period of two years, the withholding agent may request that the department waive the continued bond or security requirement.

38.9(2) *Type of security or bond.* When it is determined that a withholding agent or withholding agent applicant is required to post collateral to secure the collection of the withholding tax, the following types of collateral will be considered as sufficient: surety bonds, securities or certificates of deposit. When the withholding agent is a corporation, an officer or employee of the corporation may assume personal liability as security for the payment of the withholding tax. The officer or employee will be evaluated as provided in 38.9(1)*"a"* as if the officer or employee applied as the withholding agent as an individual.

38.9(3) *Amount of bond or security.* When it is determined that a withholding agent or withholding agent applicant is required to post a bond or securities, the following guidelines will be used to determine the amount of the bond, unless the facts warrant a greater amount: If the withholding agent or applicant will be or is a monthly depositor, a bond or securities in an amount sufficient to cover five months' withholding tax liability will be required. If the applicant or withholding agent will be or is a quarterly filer, the bond or securities which will be required is an amount sufficient to cover nine months or three quarters of tax liability.

38.9(4) *Penalty for failure of a withholding agent to file bond.* If the withholding agent is requested by the department to file a bond to secure collection of the state withholding tax and fails to file the bond, the withholding agent is subject to a penalty. The penalty for failure to file a bond is 15 percent of the tax the withholding agent is required to withhold on an annual basis. However, the penalty cannot exceed $5000.

This rule is intended to implement Iowa Code section 422.16.

701—38.10(422) Indexation. Acts of the Sixty-ninth General Assembly, 1981 Regular Session, chapter 132, and Iowa Code section 422.5 provide for the adjustment of the tax brackets and civil service annuity exclusion by a cumulative inflation factor to be determined by the director. The requirement that provided that the state general fund balance on June 30 of the prior calendar year had to be $60 million or more before there was indexation of the tax rate brackets for the current year was repealed for tax years beginning on or after January 1, 1996.

38.10(1) to **38.10(17)** Rescinded IAB 2/18/04, effective 3/24/04.

This rule is intended to implement Iowa Code sections 422.4 and 422.21.

701—38.11(422) Appeals of notices of assessment and notices of denial of taxpayer's refund claims. A taxpayer may appeal to the director at any time within 60 days from the date of the notice of assessment of tax, additional tax, interest, or penalties. For assessments issued on or after January 1, 1995, if a taxpayer fails to timely appeal a notice of assessment, the taxpayer may pay the entire assessment and file a refund claim within the period provided by law for filing such claims. In addition, a taxpayer may appeal to the director at any time within 60 days from the date of notice from the department denying changes in filing methods, denying refund claims, or denying portions of refund claims. See rule 701—7.41(17A) for information on filing appeals or protests.

This rule is intended to implement Iowa Code sections 421.10 and 422.28.

701—38.12(422) Indexation of the optional standard deduction for inflation. Effective for tax years beginning on or after January 1, 1990, the optional standard deduction is indexed or increased by the cumulative standard deduction factor computed by the department of revenue. The cumulative standard deduction factor is the product of the annual standard deduction factor for the 1989 calendar year and all standard deduction factors for subsequent annual calendar years. The annual standard deduction factor is an index, to be determined by the department of revenue by October 15 of the calendar year, which reflects the purchasing power of the dollar as a result of inflation during the fiscal year ending in that calendar year preceding the calendar year for which the annual standard deduction factor is to apply. In determining the annual standard deduction factor for tax years beginning on or after January 1, 1990, but prior to January 1, 1996, the department shall use the annual percentage change, but not less than 0

percent, in the implicit price deflator for the gross national product computed for the second quarter of the calendar year by the Bureau of Economic Analysis of the U.S. Department of Commerce and shall add one-half of that percentage change to 100 percent, rounded to the nearest one-tenth of 1 percent. For tax years beginning on or after January 1, 1996, the department shall use the annual percentage change, but not less than 0 percent, in the gross domestic product price deflator computed for the second quarter of the calendar year by the Bureau of Economic Analysis of the United States Department of Commerce and shall add all of that percentage change to 100 percent, rounded to the nearest one-tenth of 1 percent. The annual standard deduction factor shall not be less than 100 percent.

This rule is intended to implement Iowa Code section 422.4 as amended by 1996 Iowa Acts, Senate File 2449.

701—38.13(422) Reciprocal tax agreements. Effective for tax years beginning on or after January 1, 2002, the department of revenue may, when the action has been approved by the general assembly and the governor, and when it is cost-efficient, administratively feasible, and of mutual benefit to Iowa and another state, enter into a reciprocal tax agreement with a tax administration agency of the other state. Under this agreement, income earned from personal services in Iowa by residents of the other state will be exempt from Iowa income tax if the other state provides an identical exemption from its state income tax for income earned in the other state from personal services by Iowa residents. For purposes of this rule, "income earned from personal services" includes wages, salaries, commissions, tips, deferred compensation, pensions, and annuities which were earned from personal services in Iowa by a resident of another state that had a reciprocal tax agreement with Iowa at the time the wages, salaries, commissions, tips, deferred compensation, pensions, or annuities were earned.

38.13(1) *Reciprocal tax agreement with Illinois.* Pursuant to the authority of Iowa Code subsection 422.8(5), the department of revenue entered into a reciprocal tax agreement with tax administration officials of Illinois in November 1972 which went into effect for taxable years which began after December 31, 1972. The Iowa-Illinois reciprocal tax agreement cannot be terminated by the Iowa department of revenue unless the termination is authorized by a constitutional majority of each house of the general assembly and is approved by the governor. The Iowa-Illinois reciprocal tax agreement includes the following terms:

a. No Illinois or Iowa employer is required to withhold Illinois income tax from compensation paid to an Iowa resident for personal services in Illinois.

b. No Illinois or Iowa employer is required to withhold Iowa income tax from compensation paid to an Illinois resident for personal services in Iowa.

c. Every Iowa employer who is subject to the jurisdiction of Illinois is liable to the state of Illinois for withholding of Illinois income tax from compensation paid to Illinois residents.

d. Every Illinois employer who is subject to the jurisdiction of Iowa is liable to the state of Iowa for the withholding of Iowa income tax from compensation paid to Iowa residents.

e. The Illinois department of revenue will encourage Illinois employers who are not subject to the jurisdiction of Iowa to withhold and remit Iowa income tax from wages paid to Iowa residents employed in Illinois.

f. The Iowa department of revenue will encourage Iowa employers who are not subject to the jurisdiction of Illinois to withhold and remit Illinois income tax from compensation paid to Illinois residents from employment in Iowa.

g. For purposes of the agreement, "compensation" means wages, salaries, commissions, tips, deferred compensation, pensions, and annuities and any other remuneration paid for personal services. In the case of deferred compensation, pensions, and annuities, those incomes are deemed to have been earned at the time of employment. Therefore, if an Illinois resident receives a pension or annuity from employment in Iowa at the time the reciprocal agreement was in effect, the pension or annuity income is not taxable to Iowa since it is "compensation" covered by the reciprocal agreement. "Compensation" does not include unemployment compensation benefits which an Illinois resident receives due to employment in Iowa.

h. No Iowa resident is required to pay Illinois income tax or file an Illinois return from compensation paid from personal services in Illinois.

i. No Illinois resident is required to pay Iowa income tax or to file an Iowa return on compensation for personal services in Iowa.

j. For purposes of the agreement, the term "Iowa resident" means an individual who is a resident under the laws of the state of Iowa, and the term "Illinois resident" means an individual who is a resident as defined in the Illinois Income Tax Act.

38.13(2) *Reciprocal tax agreements with states other than Illinois.* The Iowa department of revenue has not entered into reciprocal tax agreements with any state except the state of Illinois. See subrule 38.13(1).

This rule is intended to implement Iowa Code section 422.8 as amended by 2002 Iowa Acts, House File 2116, and section 422.15.

701—38.14(422) Information returns for reporting income payments to the department of revenue. Effective January 1, 1993, every person, every corporation, or agent of a person or corporation, lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the state or of any political subdivision of the state, having control, receipt, custody, or disposal of any of the income items described in subrule 38.14(1), are to file information returns with the department of revenue by the last day of February following the end of the year in which the payments were made. For purposes of this rule, "every person" is every individual who is a resident of this state. For purposes of this rule, "every corporation" includes all corporations who have a place of business in this state. Information about submitting information returns to the department, including submitting the returns on magnetic tape or diskettes, is included in department of revenue publication, "State of Iowa Income Information Return Reporting Guidelines," which is available from the Taxpayer Services Section, P.O. Box 10457, Des Moines, Iowa 50306, or by telephone at (515)281-3114.

38.14(1) *Incomes to be included in information returns.* The entities described in rule 701—38.14(422) are required to file information returns to the department of revenue on income payments of interest (other than interest coupons payable to the bearer), rents, salaries, wages, premiums, annuities, compensation, remunerations, emoluments, unemployment compensation, royalties, patronage dividends, or other fixed or determinable annual or periodic gains, profits, and income to the extent that the amount of income is great enough so that an information return on the income is required to be filed with the Internal Revenue Service (IRS) under provisions of the Internal Revenue Code. However, no reporting is required for payments of deferred compensation, pensions, and annuities to nonresidents of Iowa. In addition, no reporting is required for any type of income payment where information on the income payment is available to the department from the Internal Revenue Service.

38.14(2) *Information on income payments available from the Internal Revenue Service.* The department can obtain information from the Internal Revenue Service on many income payments made to individuals in the tax year, to the extent the income payments were made to residents of Iowa. Therefore, those entities making income payments to nonresidents of Iowa will not be relieved of the responsibility for making information returns to the department on those payments, because of the availability of information on income payments from the IRS. The following is a list of federal reporting forms and the types of information available on those forms from the Internal Revenue Service for residents of Iowa:

a. 1065 K-1.

1. Dividends.
2. Interest.
3. Tax withheld.
4. Royalties.
5. Ordinary income or (loss).
6. Real estate income or (loss).
7. Other rental income or (loss).
8. Other portfolio income or (loss).
9. Guaranteed payments.

b. K-1 1041.

1. Dividends.
2. Interest.
3. Other taxable income or (loss).
4. Tax withheld.

c. K-1 1120-S.

1. Dividends.
2. Interest.
3. Tax withheld.
4. Royalties.
5. Ordinary income.
6. Real estate.
7. Other rental.
8. Other portfolio.

d. 1099-S.

1. Real estate sales.

e. 1099-B.

1. Aggregate profit and loss.
2. Realized profit and loss.

f. 1098.

1. Mortgage interest.

g. 1099-G.

1. Tax withheld.
2. Taxable grant.
3. Unemployment compensation.
4. Agricultural subsidies.

h. 1099-DIV.

1. Dividends.
2. Tax withheld.
3. Capital gains.
4. Cash liquid distribution.
5. Noncash liquid distribution.
6. Investment expense.
7. Ordinary dividends.

i. 1099-INT.

1. Interest.
2. Tax withheld.
3. Savings bonds.
4. Interest forfeiture.
5. Tax-exempt interest.

This rule is intended to implement Iowa Code section 422.15.

701—38.15(422) Relief of innocent spouse for substantial understatement of tax attributable to other spouse. A husband and wife are generally jointly and severally liable for the total tax, penalty, and interest from a joint return or from a return where they file separately on the combined return form. However, effective for tax years beginning on or after January 1, 1994, a married person who meets the criteria for an innocent spouse established in Section 6015 of the Internal Revenue Code may be relieved of liability for a substantial understatement of tax that is attributable to grossly erroneous items of the other spouse. For purposes of determining if an individual is an innocent spouse for state income tax purposes, the provisions in Section 6015 of the Internal Revenue Code will be followed as well as federal court cases, letter rulings, and revenue rulings which deal with innocent spouse. In addition, for tax years beginning on or after January 1, 2002, the provisions of Sections 6015(c) and 6015(f) of the Internal Revenue Code regarding relief for separation of liabilities and equitable relief, respectively, are applicable for Iowa income tax purposes. The following are the criteria that must be considered for purposes of determining if an individual is an innocent spouse for Iowa income tax purposes:

1. Understatement of tax attributable to grossly erroneous items of the other spouse. An understatement of the tax is the excess of the tax required to be shown over the tax actually shown on the return. The understatement must be entirely attributable to grossly erroneous items of one spouse in order for the other spouse to be eligible for status as an innocent spouse. As an innocent spouse, the individual will not be liable for the substantial understatement of tax of the other spouse. The tax liability attributable to the understatement is computed by adding penalties and interest that accrued by the date of the deficiency notice. Grossly erroneous items may include any omission from gross income such as income from embezzled funds. Grossly erroneous items may also include deductions or Iowa tax credits that are without factual or legal foundation.

2. Filing status for return with an innocent spouse. For state income tax purposes, a married taxpayer filing a return with a spouse can qualify as an innocent spouse only if the taxpayers file a joint return or file separately on the combined return form. A married taxpayer who files a separate state return will not be eligible for innocent spouse status.

3. Innocent spouse must establish lack of knowledge of other spouse's substantial understatement. Innocent spouse relief applies only if the individual claiming to be an innocent spouse can establish that in signing the state return, the individual did not know and had no reason to know that there was a substantial understatement of tax. The innocent spouse's lack of knowledge must exist until the time the return is filed and not just until the end of the year (or period) covered by the return. The U.S. Tax Court has provided that the standard for determining if a taxpayer had reason to know of an omission is

whether a reasonable person under the particular circumstances at the time of signing the return could be expected to know of the omission.

In many cases in which innocent spouse relief is sought, the following factors play a role: business background or education of person claiming innocent spouse relief, involvement in family financial affairs by the person claiming innocent spouse relief, involvement in the family business or the transaction giving rise to the understatement by the person claiming innocent spouse relief, whether or not there were lavish or unusual expenditures in the family or increase in standard of living of the family and knowledge of embezzlement activities of the other spouse.

4. Whether or not it would be equitable to hold the innocent spouse for the substantial understatement. Innocent spouse relief applies only if, taking into account all facts and circumstances, it would be inequitable to hold the claimed innocent spouse liable for the deficiency in tax for the taxable year attributable to the substantial understatement. Factors taken into account in determining whether it is inequitable to hold a spouse liable for a tax deficiency include whether the spouse seeking relief has been deserted, divorced, separated, or widowed.

Another important factor in determining equitable treatment for the person claiming innocent spouse relief is whether the person received a benefit attributable to the substantial understatement of taxes. The fact that the spouse received a benefit in the nature of "ordinary support" does not support a finding of significant benefit to deny the spouse relief. In addition, ordinary family support may include maintaining an affluent lifestyle if the standard of living is not enhanced by the tax understatement.

Where the taxpayer participated in the financial affairs of the other spouse and enjoyed the benefits from the activities of the other spouse, innocent spouse relief will not be granted.

5. Time period for requesting innocent spouse relief. For tax periods beginning on or after January 1, 2004, innocent spouse relief must be requested within two years after the date the department initiates collection action on an income tax deficiency or assessment against the person claiming innocent spouse relief.

This rule is intended to implement Iowa Code section 422.21 as amended by 2002 Iowa Acts, House File 2116.

701—38.16(422) Preparation of taxpayers' returns by department employees. A department employee can assist a taxpayer in the preparation and completion of the taxpayer's individual income tax returns and other state tax returns during the employee's hours of employment for the department in either of the following situations:

1. At the time the department employee is conducting an audit of the taxpayer.

2. When the department employee is requested to prepare a taxpayer's individual income tax return or other tax returns by the taxpayer, the taxpayer's spouse, or the taxpayer's authorized representative.

This rule is intended to implement Iowa Code section 421.17.

701—38.17(422) Resident determination. For Iowa individual income tax purposes, an individual is a "resident" if: (1) the individual maintains a permanent place of abode within the state, or (2) the individual is domiciled in the state. An individual who is determined to be a "resident" of Iowa is subject to Iowa income tax on all the individual's income for the taxable year, no matter whether the income is earned within Iowa or outside of Iowa, except when an item of income is specifically exempted from taxation by a provision of federal or Iowa law.

38.17(1) *Permanent place of abode.* The establishment of a permanent place of abode requires the maintenance of a place of abode over a sufficient period of time to create a well-settled physical connection with a given locality. Significant factors, among others, to be considered in determining whether an individual maintains such a permanent place of abode are: (1) the amount of time the individual spends in the locality; (2) the nature of the individual's place of abode; (3) the individual's activities in the locality; and (4) the individual's intentions with regard to the length and nature of the individual's stay.

There is a rebuttable presumption that an individual is maintaining a "permanent place of abode" if the individual maintains a place of abode within this state and spends more than 183 days of the tax year within this state. The term "place of abode" includes a house, apartment, condominium, mobile home, or other dwelling place maintained or occupied by the individual whether or not owned or rented by the individual. Situations where presence in the state for 183 days of the tax year may not cause an individual to be considered to be maintaining a "permanent place of abode" would include situations where presence in the state is not voluntary, such as confinement to a correctional facility or an extended hospital stay.

38.17(2) *Domicile.* An individual is "domiciled" in this state if the individual intends to permanently or indefinitely reside in Iowa and intends to return to Iowa whenever the individual may be absent from this state. Individuals who have moved into this state are domiciled in Iowa if the following three elements exist: (1) a definite abandonment of a former domicile; (2) actual removal to, and physical presence in this state; and (3) a bona fide intention to change domicile and to remain in this state permanently or indefinitely. *Julson v. Julson,* 255 Iowa 301, 122 N.W.2d 329, 331 (1963).

Every person has one and only one domicile. Domicile, for purposes of determining when an individual is "domiciled in this state," is largely a matter of intention which must be freely and voluntarily exercised. The intention to change one's domicile must be present and fixed and not dependent upon the happening of some future or contingent event. Because it is essentially a matter of intent, precedents are of slight assistance and the determination of the place of domicile depends upon all the facts and circumstances in each case.

Once an individual is domiciled in Iowa, that status is retained until such time as the individual takes positive action to become domiciled in another state or country, relinquishes the rights and privileges of residency in Iowa, and meets the criteria set forth from *Julson v. Julson*, 255 Iowa 301, 122 N.W.2d, 329, 331 (1963). The director may require an individual claiming domicile outside the state of Iowa to provide documentation supporting establishment of another domicile. Absence from the state for 183 days of the tax year or for any other extended period of time does not alone show abandonment of an Iowa domicile.

a. There is a rebuttable presumption that an individual is domiciled in Iowa if the individual meets the following factors:

(1) Maintains a residence or place of abode in Iowa, whether owned, rented, or occupied, even if the individual is in Iowa less than 183 days of the tax year, and either

(2) Claims a homestead credit or military tax exemption on a home in Iowa, or

(3) Is registered to vote in Iowa, or

(4) Maintains an Iowa driver's license, or

(5) Does not reside in an abode in any other state for more days of the tax year than the individual resides in Iowa.

b. There is a rebuttable presumption that an individual is not domiciled in Iowa if the individual meets all of the following factors:

(1) Does not claim a homestead credit or military exemption on a home in Iowa,

(2) Is not registered to vote in Iowa,

(3) Does not maintain an Iowa driver's license,

(4) Is in Iowa less than 183 days of the tax year; and

(5) The individual maintains a place of abode outside of Iowa where the individual resides for at least 183 days of the tax year.

c. In addition to the factors listed for the above rebuttable presumptions for "permanent place of abode" or "domicile," some of the nonexclusive factors to consider in determining whether an individual is a resident of Iowa are as follows:

(1) Maintains a place of abode in Iowa, whether owned, rented, or occupied.

(2) Maintains an Iowa driver's license.

(3) Maintains active membership in an Iowa church, club, or professional organization and participates as a result of such membership.

(4) Documents, such as tax forms, legal documents, and correspondence, initiated during tax periods, use an Iowa address. Legal documents could include wills, deeds, or other contracts.

(5) Immediate family members residing in Iowa who are claimed as dependents or rely, in whole or in part, on the taxpayer for their support.

(6) Vehicles registered in Iowa.

(7) Location of employment or active participation in a business within Iowa.

(8) Active checking or savings accounts or use of safe deposit boxes located in Iowa.

(9) Claims a benefit on the federal income tax return based upon an Iowa home being the principal place of residence. Examples include mortgage interest on principal residence and travel expenses while away from the principal place of residence.

(10) Receives a number of services in Iowa from doctors, dentists, attorneys, CPAs or other professionals.

Unless shown to the contrary, married persons are presumed to have the same residence. Ordinarily, the residence of a minor is that of the person who has permanent custody over the minor.

An individual may qualify as a part-year resident of Iowa by: (1) not maintaining a permanent place of abode; and (2) not having a domicile in Iowa for the entire tax year. In determining part-year resident status, whether an individual is in or out of Iowa for 183 days may not be a factor.

38.17(3) *Resident determination for individuals on active duty military service.* The Soldiers and Sailors Civil Relief Act provides in 50 U.S.C. Appx § 574(1) that members of the armed forces of the United States shall not be deemed to have lost a residence or domicile in any state, solely by being absent from that state in compliance with military or naval orders, or to have acquired a residence or domicile in another state while being absent from the state of residence. Thus, residents of Iowa who enter military service will retain their Iowa residence during the tenure of their military service or until they take positive action to change their state of residence.

Residents of Iowa in military service will have Iowa income tax withheld from their military pay except when the military pay is earned in a combat zone and is totally or partially exempt from both federal and state income tax. An Iowa resident in military service can change state of residence for purposes of withholding of state income tax by completing Form DD2058 and designating a state other than Iowa as the individual's new state of residence. The military payroll officer of the service person will accept the DD2058 form and stop withholding Iowa income tax from the service person's military pay and start withholding the state income tax of the state of new residence of the service person (assuming the new state of residence has an income tax and assuming the new state of residence requires withholding of income tax from wage payments to its residents in military service). However, the completion of the DD2058 form by the "former Iowa resident" will not be considered as a valid change of residence for Iowa income tax purposes unless the service person was physically residing in the new state of residence at the time the DD2058 form was completed and the service person took other actions to show intent to change state of residence. Other actions to show intent to change state of residence would include: (1) registering to vote in the new state; (2) purchasing real property in the new state; (3) titling and registering vehicles in the new state; (4) notifying the state of previous residence of the state of residence change; (5) preparing a new last will and testament which indicates the new residence; and (6) complying with the tax laws of the state of new residence.

Military personnel who are residents of other states and who come to Iowa as a result of military or naval orders, but who later decide to become legal or actual residents of Iowa, or military personnel who purchase residential property in Iowa and claim homestead credits or the military exemption for the property for property tax purposes are presumed to be residents of Iowa for income tax purposes.

Military personnel who are not residents of the state of Iowa and who receive military pay for service in Iowa shall not be considered to have received this income for services performed within Iowa or from sources within Iowa. These nonresidents of Iowa will be taxable on nonmilitary wages for personal services in Iowa they receive while stationed in Iowa. These individuals will also be taxable to Iowa on incomes they receive from businesses, trades, professions, or occupations operated in Iowa during the time they are stationed in Iowa as well as on nonmilitary incomes from any other sources within Iowa.

Since military nonresidents of Iowa cannot be taxed on their military pay while they are stationed in Iowa, the military pay cannot be considered for purposes of Iowa's taxation of nonresidents in accordance with the Servicemembers Civil Relief Act, Public Law 108-189. The military pay of the nonresident of Iowa must be excluded from the computation of the nonresident credit set forth in 701—subrule 42.3(1).

Spouses of military personnel who earn wages and other incomes from Iowa sources are taxed on these incomes similarly to other nonresidents of Iowa. Spouses of Iowa resident military personnel who were nonresidents of Iowa at the time of the marriages with the Iowa residents will not be considered to be residents of Iowa until they actually reside in Iowa with their husbands or wives.

38.17(4) *Examples of resident determination.*

a. Fred and Mary were domiciled in Iowa when Fred retired in 1994. They have a house in Iowa and a condominium in Florida. Prior to 1994, Fred and Mary spent approximately four months in Florida and the remaining eight months in Iowa. Fred owned a small business when he retired and was retained as a consultant and remained a member of the board of directors after retirement. Fred and Mary have friends and family in both Iowa and Florida. They are also involved in the activities of the local country club as well as other civic and service organizations in both locations. When Fred retired, he and Mary decided to spend more time in Florida, especially during the winter months. They usually leave for Florida in late October and return to Iowa in early April. They have transferred their automobile registrations to Florida and they have acquired Florida driver's licenses. They have registered to vote in Florida and have voted in Florida elections. They visit doctors and dentists in both locations as the need arises. They maintain bank accounts in both locations and have mail sent to the location at which they are physically residing. Fred and Mary usually return to Iowa for the Thanksgiving and Christmas holidays and Fred returns once a month to attend board meetings. They do not claim a homestead credit or military tax exemption on their Iowa home, but they do use their Iowa address on most of their legal documents and on their federal tax return. They also travel and vacation during the winter months and oftentimes leave Florida to vacation.

Fred and Mary would be considered Iowa residents because they have retained a permanent abode in Iowa.

b. Susan takes an apartment in Des Moines when her employer assigns her to the region office of a large accounting firm for a temporary period. She spends more than 183 days in Iowa, but she returns to her apartment in Ohio once a month to visit her friends and to check her mail. She intends to return to Ohio when her assignment in Des Moines is terminated. She has retained her Ohio driver's license and she is registered to vote in Ohio.

Susan would not be considered to be an Iowa resident because she has not established a "permanent" place of abode in Iowa, even though she is present in Iowa for more than 183 days. Also, she has not had a definite abandonment of her former domicile. Susan would be taxed on her Iowa income as a nonresident. However, if Susan was assigned to Des Moines on a permanent basis, she may be considered an Iowa resident even though she retains her apartment in Ohio.

c. John is an over-the-road truck driver and his job takes him out of Iowa for approximately 240 days a year. He is married and his wife, Mary, lives in Marshalltown, Iowa. His two school-age children attend school in that community and Mary also has a part-time job as a nurse for the neighborhood clinic. John gets home for most weekends and for the holidays. He is registered to vote in Iowa and utilizes the Iowa homestead and military tax exemptions. He does not own any other real property except a lakeside cabin in Minnesota, where the family vacations during the summer.

John would be considered an Iowa resident even though he is not present in the state for more than 183 days because John intends to return to Iowa whenever he is absent and has not taken any steps to establish residency in any other state.

d. Wilber, who is a resident of Idaho, has a heart attack while vacationing in Iowa. He is hospitalized in the University Hospitals in Iowa City. While there, the doctors also discover that he has a rare blood disorder and Wilber is confined to the hospital for nearly nine months, during which time he receives treatment.

Wilber's presence in Iowa is for a medical emergency. When an individual suffers a medical emergency while present in this state for other purposes and cannot be realistically moved from the

state or in situations where an individual is confined to an institution as a result of seeking treatment, the time spent in Iowa would not count toward the 183-day rule. Also, Wilber's hospital room would not be considered a permanent place of abode.

e. Chuck and Linda both worked for a major manufacturing company in Iowa and both of them decided to take advantage of an early retirement package offered by their employer. They do not have any children, but Chuck has a brother who lives in Davenport, Iowa, and Linda has a sister who lives in Phoenix, Arizona. After retirement, Chuck and Linda sell their house and purchase a motor home. They spend their time traveling the United States and Canada. They do not have a place of abode in any state as they live in their new vehicle. They do not spend more than 183 days in any state during the year. They retained their Iowa driver's licenses and their motor home is registered in Iowa. They also have bank accounts in both Iowa and Arizona, and they have their mail sent to Chuck's brother as well as Linda's sister. They show Iowa as their state of residence for federal income tax purposes. They are not registered to vote in any state.

Chuck and Linda would be considered residents of Iowa. They have not shown an intention to change domicile and remain in another state permanently or indefinitely.

This rule is effective for tax years beginning on or after January 1, 1995.

This rule is intended to implement Iowa Code sections 422.3, 422.4 and 422.16.

701—38.18(422) Tax treatment of income repaid in current tax year which had been reported on prior Iowa individual income tax return. For tax years beginning on or after January 1, 1992, if a taxpayer repays in the current tax year an amount of income that had been reported on the taxpayer's Iowa individual income tax return for a prior year that had been filed with the department and the taxpayer would have been eligible for a tax benefit under similar circumstances under Section 1341 of the Internal Revenue Code, the taxpayer will be eligible for a tax benefit on the Iowa return for the current tax year. The tax benefit will be either the reduced tax on the Iowa return for the current tax year due to the deduction of the repaid income or the reduction in tax on the Iowa return or returns for the prior year(s) due to the exclusion of the repaid income. The reduction in tax from the return for the prior year may be claimed as a refundable credit on the return for the current tax year.

EXAMPLE A: A taxpayer reported $7,000 in unemployment benefits on the taxpayer's 1994 Iowa return that the taxpayer had received in 1994. In early 1995 the taxpayer was notified that $4,000 of the unemployment benefits had to be repaid. The benefits were repaid by the end of 1995. The taxpayer claimed a deduction on the 1995 Iowa return for the amount of unemployment benefits repaid during 1995 which had been reported on the taxpayer's 1994 Iowa return as that action gave the taxpayer a greater reduction in Iowa income tax liability than the taxpayer would have received from a reduction in tax on the 1994 return by recomputing the liability by excluding the repaid income.

EXAMPLE B: A taxpayer had received a $5,000 bonus in 1994 which was reported on the taxpayer's 1994 Iowa return. In 1995 the taxpayer's employer advised the employee that the bonus was awarded in error and to be repaid. The $5,000 bonus was repaid to the employer by the end of 1995. The taxpayer claimed a credit of $440 on the 1995 Iowa return for repayment of the bonus in 1995. This represented the reduction in tax for 1994 from recomputing the tax liability for that year without the $5,000 bonus. This provided the taxpayer a greater tax benefit than the taxpayer would have received from claiming a deduction on the 1995 Iowa return from repayment of the bonus.

This rule is intended to implement Iowa Code section 422.5 as amended by 1996 Iowa Acts, Senate File 2168.

701—38.19(422) Indication of dependent child health care coverage on tax return. For tax years beginning on or after January 1, 2008, an individual who is an Iowa resident as of December 31 of the tax year who files an Iowa individual income tax return may report on the return the presence or absence of health care coverage for each dependent child as of December 31 of the tax year for which the exemption credit described in 701—subrule 42.2(1), paragraph *"c,"* is claimed. It is not mandatory that a taxpayer indicate on the tax return the presence or absence of health care coverage for each dependent, and there is no penalty if this information is not provided on the tax return.

38.19(1) *Definition of health care coverage.* Health care coverage includes the following:

a. Private health care coverage provided through an employer, a relative's employer, or through a union.

b. Private health care coverage purchased by an individual from a private company.

c. Government health care coverage provided through the state Medicaid program set forth in Iowa Code chapter 249A, or the HAWK-I (healthy and well kids in Iowa) program set forth in Iowa Code chapter 514I.

d. Government health care coverage provided by the military including the Civilian Health and Medical Program of the Uniformed Services (TRICARE/CHAMPUS) and the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA).

e. Government health care coverage provided by the United States Department of Health and Human Services to eligible American Indians under the Indian Health Service program.

38.19(2) *Notification to the taxpayer.* If the taxpayer indicates on the return that a dependent child does not have health care coverage and the taxpayer's income reflected on the tax return is within the eligibility requirements for either the Medicaid program or the HAWK-I program, the department will send a letter to the taxpayer indicating that the dependent may be eligible for health care coverage under either the Medicaid or HAWK-I program. The letter will also enclose an application for health care coverage under either the Medicaid or HAWK-I program which can be completed and sent to the Iowa department of human services. The department of human services will make the final determination on whether the taxpayer is eligible under the Medicaid or HAWK-I program. A dependent child must be under the age of 21 to be eligible for the Medicaid program, and a dependent child must be under the age of 19 to be eligible for the HAWK-I program.

38.19(3) *Reporting requirements.* The department, in cooperation with the department of human services, must submit an annual report to the governor and the general assembly which will include the following:

a. Number of Iowa families, by income level, who claim the personal exemption credit for dependent children described in 701—subrule 42.2(1), paragraph *"c."*

b. The number of Iowa families, by income level, who claim the personal exemption credit who also indicated the presence or absence of health care coverage for their dependent children.

c. The effect of these reporting and notification requirements on the number and percentage of children in Iowa who are uninsured.

This rule is intended to implement 2008 Iowa Acts, House File 2539, section 4.

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◊ Two or more ARCs

CHAPTER 39
FILING RETURN AND PAYMENT OF TAX
[Prior to 12/17/86, Revenue Department[730]]

701—39.1(422) Who must file.

39.1(1) *Residents of Iowa.*

a. Tax years beginning on or after January 1, 1993. For each taxable year, every resident of Iowa, except any resident claimed as a dependent on another person's return, whose net income is greater than $13,500 in the case of married persons filing jointly, filing separately on a combined return or filing separate returns, heads of household and surviving spouses or greater than $9,000 in the case of single persons must make, sign, and file a return. Each resident who is claimed as a dependent on another person's return and whose net income is $4,000 or more, or whose net income is $5,000 or more for tax years beginning on or after January 1, 2001, must make, sign, and file a return. For purposes of this subrule, the portion of a lump-sum distribution subject to separate federal tax, along with the partial exclusion of pension and other retirement benefits described in rule 701—40.47(422), is included in net income to determine if a person must file a return. In addition, for tax years beginning on or after January 1, 2007, the phase-out exclusion for social security benefits described in 701—subrule 40.23(3) for residents who are younger than 65 years of age on December 31 of the tax year is included in net income to determine if a person must file a return.

b. Tax years beginning on or after January 1, 2007, but before January 1, 2009, for residents 65 years of age or older. For these taxable years, every resident of Iowa, except any resident claimed as a dependent on another person's return, who is at least 65 years of age or older on December 31 of the tax year, whose net income is greater than $24,000 in the case of married persons filing jointly, filing separately on a combined return or filing separate returns, heads of household and surviving spouses or greater than $18,000 in the case of single persons must make, sign, and file a return. For married persons filing jointly, filing separately on a combined return or filing separate returns, only one spouse is required to be 65 years of age or older on December 31 of the tax year. Each resident who is claimed as a dependent on another person's return and whose net income is $5,000 or more must make, sign, and file a return.

For purposes of this subrule, the portion of a lump-sum distribution subject to separate federal tax, the partial exclusion of pension and other retirement benefits described in rule 701—40.47(422), and the phase-out exclusion for social security benefits described in 701—subrule 40.23(3) are included in net income to determine if a person must file a return.

c. Tax years beginning on or after January 1, 2009, for residents 65 years of age or older. For each taxable year, every resident of Iowa, except any resident claimed as a dependent on another person's return, who is at least 65 years of age or older on December 31 of the tax year, whose net income is greater than $32,000 in the case of married persons filing jointly, filing separately on a combined return or filing separate returns, heads of household and surviving spouses or greater than $24,000 in the case of single persons must make, sign, and file a return. For married persons filing jointly, filing separately on a combined return or filing separate returns, only one spouse is required to be at least 65 years of age or older on December 31 of the tax year. Each resident who is claimed as a dependent on another person's return and whose net income is $5,000 or more must make, sign, and file a return.

For purposes of this subrule, the portion of a lump-sum distribution subject to separate federal tax, the partial exclusion of pension and other retirement benefits described in rule 701—40.47(422), and the phase-out exclusion for social security benefits described in 701—subrule 40.23(3) are included in net income to determine if a person must file a return.

39.1(2) *Nonresidents of Iowa.*

a. Tax years beginning on or after January 1, 1993. For each taxable year, every nonresident of Iowa must make, sign, and file an Iowa return if the nonresident has a net income of $1,000 or more from Iowa sources and meets one or more of the following conditions: (1) has a net income from all sources that is greater than $13,500 in the case of married persons filing jointly, filing separately on a combined return or filing separate returns, heads of household and surviving spouses, (2) has a net

income from all sources greater than $9,000 in the case of single persons, or (3) is claimed as a dependent on another person's return and has a net income from all sources of $4,000 or more or has a net income from all sources of $5,000 or more if the tax year begins on or after January 1, 2001. For purposes of this paragraph, the portion of a lump-sum distribution subject to separate federal tax that is allocable to Iowa is included in net income to determine if the nonresident has sufficient net income from Iowa sources to make and file a return. In determining net income from all sources, the portion of a lump-sum distribution subject to separate federal tax, along with the partial exclusion of pension and other retirement benefits described in rule 701—40.47(422), is included in net income to determine if a person must file a return. In addition, for tax years beginning on or after January 1, 2007, the phase-out exclusion for social security benefits described in 701—subrule 40.23(3) for nonresidents who are under 65 years of age on December 31 of the tax year is included in determining net income from all sources to determine if a person must file a return.

b. Tax years beginning on or after January 1, 2007, but before January 1, 2009, for nonresidents 65 years of age or older. For these taxable years, every nonresident of Iowa must make, sign, and file an Iowa return if the nonresident has a net income of $1,000 or more from Iowa sources and meets one or more of the following conditions: (1) has a net income from all sources that is greater than $24,000 in the case of married persons filing jointly, filing separately on a combined return or filing separate returns, heads of household and surviving spouses, (2) has a net income from all sources greater than $18,000 in the case of single persons, or (3) is claimed as a dependent on another person's return and has a net income from all sources of at least $5,000. For married persons filing jointly, filing separately on a combined return or filing separate returns, only one spouse is required to be 65 years of age or older on December 31 of the tax year. For purposes of this subrule, the portion of a lump-sum distribution subject to separate federal tax that is allocable to Iowa is included in net income to determine if the nonresident has sufficient net income from Iowa sources to make and file a return. In determining net income from all sources, the portion of a lump-sum distribution subject to separate federal tax, the partial exclusion of pension and other retirement benefits described in rule 701—40.47(422), and the phase-out exclusion for social security benefits described in 701—subrule 40.23(3) are included in net income to determine if a person must file a return.

c. Tax years beginning on or after January 1, 2009, for nonresidents 65 years of age or older. For these taxable years, every nonresident of Iowa must make, sign, and file an Iowa return if the nonresident has a net income of $1,000 or more from Iowa sources and meets one or more of the following conditions: (1) has a net income from all sources that is greater than $32,000 in the case of married persons filing jointly, filing separately on a combined return or filing separate returns, heads of household and surviving spouses, (2) has a net income from all sources greater than $24,000 in the case of single persons, or (3) is claimed as a dependent on another person's return and has a net income from all sources of at least $5,000. For married persons filing jointly, filing separately on a combined return or filing separate returns, only one spouse is required to be 65 years of age or older on December 31 of the tax year. For purposes of this subrule, the portion of a lump-sum distribution subject to separate federal tax that is allocable to Iowa is included in net income to determine if the nonresident has sufficient net income from Iowa sources to make and file a return. In determining net income from all sources, the portion of a lump-sum distribution subject to separate federal tax, the partial exclusion of pension and other retirement benefits described in rule 701—40.47(422), and the phase-out exclusion for social security benefits described in 701—subrule 40.23(3) are included in net income to determine if a person must file a return.

d. Nonresidents with net incomes of less than $1,000 that are subject to Iowa alternative minimum tax. For tax years beginning on or after January 1, 2000, every nonresident of Iowa who has a net income from Iowa sources of less than $1,000 must make, sign, and file a return if the nonresident is subject to Iowa alternative minimum tax.

39.1(3) *Part-year residents of Iowa.*

a. Tax years beginning on or after January 1, 1993. For each taxable year, every part-year resident of Iowa must make, sign, and file a return if the individual has a net income of $1,000 or more from Iowa sources and meets one or more of the following conditions: (1) has a net income from all sources that is

greater than $13,500 in the case of married persons filing jointly, filing separately on a combined return form or filing separate returns, heads of household and surviving spouses, (2) has a net income from all sources that is greater than $9,000 in the case of a single person, or (3) is claimed as a dependent on another person's return and had a net income from all sources of $4,000 or more or has a net income from all sources of $5,000 or more if the tax year begins on or after January 1, 2001. For purposes of this paragraph, the portion of a lump-sum distribution that is allocable to Iowa is included in net income to determine if the person has sufficient net income from Iowa sources to make and file a return. In determining net income from all sources, the portion of a lump-sum distribution subject to separate federal tax, along with the partial exclusion of pension and other retirement benefits described in rule 701—40.47(422), is included in net income to determine if a person must file a return. In addition, for tax years beginning on or after January 1, 2007, the phase-out exclusion for social security benefits described in 701—subrule 40.23(3) for part-year residents who are younger than 65 years of age on December 31 of the tax year is included in determining net income from all sources to determine if a person must file a return.

b. Tax years beginning on or after January 1, 2007, but before January 1, 2009, for nonresidents 65 years of age or older. For these taxable years, every part-year resident of Iowa must make, sign, and file an Iowa return if the part-year resident has a net income of $1,000 or more from Iowa sources and meets one or more of the following conditions: (1) has a net income from all sources that is greater than $24,000 in the case of married persons filing jointly, filing separately on a combined return or filing separate returns, heads of household and surviving spouses, (2) has a net income from all sources greater than $18,000 in the case of single persons, or (3) is claimed as a dependent on another person's return and has a net income from all sources of at least $5,000. For married persons filing jointly, filing separately on a combined return or filing separate returns, only one spouse is required to be 65 years of age or older on December 31 of the tax year. For purposes of this subrule, the portion of a lump-sum distribution subject to separate federal tax that is allocable to Iowa is included in net income to determine if the part-year resident has sufficient net income from Iowa sources to make and file a return. In determining net income from all sources, the portion of a lump-sum distribution subject to separate federal tax, the partial exclusion of pension and other retirement benefits described in rule 701—40.47(422), and the phase-out exclusion for social security benefits described in 701—subrule 40.23(3) are included in net income to determine if a person must file a return.

c. Tax years beginning on or after January 1, 2009, for part-year residents 65 years of age or older. For these taxable years, every part-year resident of Iowa must make, sign, and file an Iowa return if the part-year resident has a net income of $1,000 or more from Iowa sources and meets one or more of the following conditions: (1) has a net income from all sources that is greater than $32,000 in the case of married persons filing jointly, filing separately on a combined return or filing separate returns, heads of household and surviving spouses, (2) has a net income from all sources greater than $24,000 in the case of single persons, or (3) is claimed as a dependent on another person's return and has a net income from all sources of at least $5,000. For married persons filing jointly, filing separately on a combined return or filing separate returns, only one spouse is required to be 65 years of age or older on December 31 of the tax year. For purposes of this subrule, the portion of a lump-sum distribution subject to separate federal tax that is allocable to Iowa is included in net income to determine if the part-year resident has sufficient net income from Iowa sources to make and file a return. In determining net income from all sources, the portion of a lump-sum distribution subject to separate federal tax, the partial exclusion of pension and other retirement benefits described in rule 701—40.47(422), and the phase-out exclusion for social security benefits described in 701—subrule 40.23(3) are included in net income to determine if a person must file a return.

d. Part-year residents with net incomes of less than $1,000 that are subject to Iowa alternative minimum tax. For tax years beginning on or after January 1, 2000, every part-year resident of Iowa who has a net income from Iowa sources of less than $1,000 must make, sign, and file a return if the part-year resident is subject to Iowa alternative minimum tax.

39.1(4) *Returns of the handicapped.* If a taxpayer is physically or mentally unable to make a return, the return shall be made by a duly authorized agent, guardian or other person charged with the care of

the person or property of such taxpayer. A power of attorney must accompany a return made by an agent or guardian.

39.1(5) *Minimum income requirement.* See rules 701—40.1(422) to 40.52(422) and any subsequent rules in Chapter 40 for the computation of net income to determine if a taxpayer meets the minimum filing requirements described in subrules 39.1(1), 39.1(2), and 39.1(3).

39.1(6) *Final return.* If a taxpayer has died during the year, see paragraph 39.4(2)*"d."*

39.1(7) *Returns filed for refund.* A taxpayer whose Iowa source net income or all source net income is less than the amount for which the filing of an Iowa individual income tax return is required must file a return to receive a refund of Iowa income tax withheld or Iowa estimated tax paid in the tax year or to receive a refund from an Iowa refundable tax credit. Refundable tax credits include the child and dependent care credit, the early childhood development tax credit, the research activities credit, the motor vehicle fuel tax credit, the claim of right credit (if elected in accordance with rule 701—38.18(422)), the assistive device credit, the historic preservation and cultural and entertainment district tax credit, the ethanol blended gasoline tax credit, the investment tax credit for value-added agricultural products or biotechnology-related processes, the soy-based cutting tool oil tax credit, the wage-benefit tax credit, the soy-based transformer fluid tax credit, the E-85 gasoline promotion tax credit, and the biodiesel blended fuel tax credit.

This rule is intended to implement Iowa Code sections 422.5 and 422.13.

701—39.2(422) Time and place for filing.

39.2(1) *Returns of individuals.* A return of income must be filed on or before the due date. The due date is the last day of the fourth month following the close of the taxpayer's taxable year, whether the return be made on the basis of the calendar year or for a fiscal year, or the last day of the period covered by an extension of time granted by the department. When the due date falls on Saturday, Sunday or a legal holiday, the return will be due the first business day following the Saturday, Sunday or legal holiday. If a return is placed in the mails, properly addressed and postage paid, in ample time to reach the department on or before the due date for filing, no penalty will attach should the return not be received until after that date. Mailed returns should be addressed to Income Tax Return Processing, Department of Revenue, Hoover State Office Building, Des Moines, Iowa 50319.

Farmers and fishermen have the same filing due date as other individual taxpayers, however, those farmers and fishermen who have elected not to file a declaration of estimated tax shall file their returns and pay the tax due, on or before March 1, to avoid penalty for underpayment of estimated tax.

39.2(2) *Extension of time for filing returns for tax years beginning prior to January 1, 1986.* Rescinded IAB 11/24/04, effective 12/29/04.

39.2(3) *Extension of time for filing returns for tax years beginning on or after January 1, 1986, but before January 1, 1991.* Rescinded IAB 11/24/04, effective 12/29/04.

39.2(4) *Extension of time for returns for tax years beginning on or after January 1, 1991.* The taxpayer is required to file the taxpayer's individual income tax return on or before the due date of the return with payment in full of the amount required to be shown due with the return. However, in any instance where the taxpayer is unable to file the return by the due date because of illness or death in the taxpayer's immediate family, unavoidable absence of the taxpayer, or other legitimate reason, the director may grant a six-month extension of time to file the return.

If the taxpayer has paid at least 90 percent of the tax required to be shown due by the due date and has not filed a return by the due date, the director will consider that the taxpayer has requested an extension of time to file the return and will automatically grant an extension of up to six months to file the return. The taxpayer does not have to file an application for extension form with the department to get the automatic extension to file the return within the six-month period after the due date and not be subject to penalty. However, if the taxpayer wants to make a tax payment to ensure that at least 90 percent of the tax has been paid on or before the due date, the payment should be made with the Iowa tax voucher form. This form can be requested from the Taxpayer Services Section, P.O. Box 10457, Des Moines, Iowa 50306, or by telephone at (515)281-3114.

To determine whether or not at least 90 percent of the tax was "paid" on or before the due date, the aggregate amount of tax credits applicable on the return plus the tax payments made on or before the due date are divided by the tax required to be shown due on the return. The tax required to be shown on the return is the sum of the income tax, lump-sum tax, minimum tax, school district income surtax, and the emergency medical services income surtax. The tax credits applicable are the credits set out in Iowa Code chapter 422, division II, and section 422.111. The tax payments to be considered for purposes of determining if 90 percent of the tax was paid are the withholding tax payments, estimate payments, and the payments made with the Iowa income tax voucher form to ensure that 90 percent of the tax was paid timely.

If the aggregate of the tax credits and the tax payments are equal to or greater than 90 percent of the tax required to be shown due, the taxpayer will have met the "90 percent" test and no penalty will be assessed. However, the taxpayer will still be subject to statutory interest on any tax due when the return is filed.

Any tax elections, such as the election to carry forward a net operating loss occurring in the tax year, will be considered to be valid in instances when the return is filed within the six-month extended period after the due date. The fact that the taxpayer has paid less than 90 percent of the tax required to be shown due will not invalidate any tax elections made on the return, if the return is filed within the six-month extended period.

a. Extensions for taxpayers with tax homes outside the United States and Puerto Rico. Taxpayers with tax homes outside the United States and Puerto Rico may, in some situations, be granted additional time to file their federal income tax returns beyond the six-month period after the federal due date. In some cases, this additional time is needed to meet residency time requirements in a foreign country so the taxpayer will be eligible for the foreign income exclusion which is also applicable to filing Iowa income tax returns. In cases where the taxpayer's tax home is outside the United States and the taxpayer has been granted additional time to file the federal income tax return which is greater than six months from the due date, the taxpayer will be deemed to have the same additional time to file the Iowa return and not be subject to penalty for late filing if 90 percent of the tax required to be shown due on the return was paid by the due date. Taxpayers with tax elections filing returns under these circumstances will be considered to have made these elections timely. However, the taxpayers should attach to their Iowa return documentation showing they were granted additional time after the six-month period from the due date to file their federal returns.

b. Payment of interest on refunds from income tax returns filed in the six-month period after the due date. The following information applies only to Iowa individual income tax returns that are filed for tax years beginning on or after January 1, 1999. In the case of Iowa returns that have overpayments of income tax that are filed in the six-month period after the due date and where at least 90 percent of the tax shown due was paid by the due date, interest at the statutory rate will be paid on the overpayments determined on the returns, starting on the first day of the second month after the end of the six-month extended period and ending in the month in which the refund is issued.

For taxpayers filing Iowa individual income tax returns for calendar-year tax years, the six-month extended period starts May 1 of the year following the end of the tax year and ends on October 31 of the year following the end of the tax year. However, if April 30 falls on a Sunday as it does in the year 2000 for 1999 Iowa individual returns filed in that year, the due date is moved to Monday, May 1. The extended period in this instance starts on Tuesday, May 2, 2000, and ends on October 31, 2000.

EXAMPLE. A husband and wife file their 1999 Iowa return on September 15, 2000. This return has an overpayment of tax of $200. Because the return is filed in the six-month period after the May 1, 2000, due date, and because the refund is issued in January 2001, interest accrues on the overpayment for the months of December 2000 and January 2001.

This rule is intended to implement Iowa Code section 422.21 and Iowa Code Supplement section 422.25.

701—39.3(422) Form for filing.

39.3(1) *Use of and completeness of prescribed forms.* Returns shall, in all cases, be made by residents and nonresidents on forms supplied by the department of revenue. Taxpayers not supplied with the proper forms shall make application for the forms to the department, in ample time to have their returns made, verified and filed on or before the due date. Each taxpayer shall carefully prepare a return so as to fully and clearly set forth the data required. For lack of a prescribed form, a statement made by a taxpayer disclosing gross income and the deductions from gross income may be accepted as a tentative return, and if verified and filed within the prescribed time, will relieve the taxpayer from liability to penalties, provided that without unnecessary delay a tentative return is replaced by a return made on the proper form. Each question shall be answered and each direction complied with in the same manner as if the forms and instructions were embodied in these regulations. Individual resident taxpayers shall enter the name of the school district of residence on the return. If the school district is not supplied, the return shall be deemed incomplete.

A return not signed by the taxpayer or the taxpayer's agent or guardian, shall not be deemed completely executed and filed as required by law.

Failure to receive the proper form does not relieve the taxpayer from the obligation of making any return required by statute.

39.3(2) *Optional method of filing.* The front and back page of the Iowa individual income tax return, if properly completed, may be filed as an optional return, if a complete facsimile or photocopy of the federal return and supporting schedules are attached.

39.3(3) *Copy of federal income tax return to be filed by nonresident.* A nonresident taxpayer must file a copy of their federal income tax return for the current tax year with their Iowa income tax return. The copy shall include full and complete copies of all farm, business, capital gains and other schedules that were filed with the federal return.

39.3(4) *Amended returns.* If it becomes known to the taxpayer that the amount of income reported to be federal net income or Iowa taxable income was erroneously stated on the Iowa return, or changed by an Internal Revenue Service audit, or otherwise, the taxpayer shall file an amended Iowa return along with supporting schedules, to include the amended federal return if applicable. A copy of the federal revenue agent's report and notification of final federal adjustments provided by the taxpayer will be acceptable in lieu of an amended return. The assessment or refund of tax shall be dependent on the statute of limitations as set forth in 701—subrule 38.2(1) and rule 701—43.3(422).

39.3(5) *Voter's registration forms in income tax booklets and income tax return instructions.* Effective for tax years beginning on or after January 1, 1989, income tax return booklets and income tax return instructions shall include two voter registration forms. The voter registration forms to be inserted into the income tax return instruction forms and booklets are to be designed by the voter registration commission. However, effective July 1, 1992, the voter registration forms are to be inserted in the income tax return booklets and income tax return instructions only for odd-numbered tax years. Thus, the voter registration forms will not be included in the income tax return booklets for the 1992 tax year but are to be included in the booklets for 1993.

Effective July 1, 2004, the requirement that voter registration forms be included in the income tax booklets and income tax instructions has been eliminated. The official Web site of the department includes the official electronic state of Iowa voter registration form and a link to the Iowa secretary of state's official Web site.

This rule is intended to implement Iowa Code sections 422.13, 422.21 and 422.22 and Iowa Code sections 48A.24 and 421.17 as amended by 2004 Iowa Acts, Senate File 2296.

701—39.4(422) Filing status.

39.4(1) *Single taxpayers.* The term "single person" includes, for income tax purposes, an unmarried person, a person legally separated under a decree of divorce or separate maintenance or any other person not properly classified under subrules 39.4(2) through 39.4(8).

39.4(2) *Married taxpayers.* A taxpayer is considered married for the entire year if on the last day of the tax year the taxpayer is *(a)* married and living together with the taxpayer's spouse, *(b)* married and

living apart from the spouse, but not legally separated under a decree of divorce or separate maintenance, *(c)* living together with the spouse in a common law marriage that is recognized by the state where the common law marriage exists or *(d)* widowed but the spouse died during the year.

39.4(3) *Common law marriage.* A common law marriage is a social relationship between a man and a woman that meets all the necessary requisites of a marriage except that it was not solemnized, performed or witnessed by an official authorized by law to perform marriages. The necessary elements of a common law marriage are: *(a)* a present intent of both parties freely given to become married, *(b)* a public declaration by the parties or a holding out to the public that they are husband and wife, *(c)* continuous cohabitation together as husband and wife (this means consummation of the marriage), and *(d)* both parties must be capable of entering into the marriage relationship. No special time limit is necessary to establish a common law marriage. Iowa recognizes, for income tax purposes, all valid common law marriages.

39.4(4) *Married filing jointly.* Married taxpayers who file a joint return with the Internal Revenue Service may file a joint return with the Iowa department of revenue.

39.4(5) *Married filing separately on the same form.* Married taxpayers may file separately on the same form. This return is also known as the combined return. If a married taxpayer files a combined return with his or her spouse, any refund will be issued in both names.

39.4(6) *Married filing separately.* Married taxpayers, each having income in his or her own right, may file separate returns if they do not wish to file separately on the same form.

39.4(7) *Head of household.* The term "head of household" shall have the same meaning as defined in the Internal Revenue Code. An individual who is claiming "surviving spouse" status for federal income tax purposes may not claim "head of household" on the Iowa individual income tax return.

39.4(8) *Surviving spouse.* The term "surviving spouse" shall have the same meaning as defined in the Internal Revenue Code. Individuals who qualify and file as a qualifying widow(er) with a dependent child on the federal return may file using the same filing status on the Iowa return.

This rule is intended to implement Iowa Code section 422.12.

701—39.5(422) Payment of tax.

39.5(1) *Payment of tax for wage earners.* Withholding of tax on wage earners is required under Iowa Code section 422.16. See 701—Chapter 46.

39.5(2) *Payment of tax on income not subject to withholding.* Those taxpayers with income not subject to withholding which will produce a tax liability of $200 or more shall file and pay a declaration of estimated tax. See 701—Chapter 49.

39.5(3) *Full estimated payment on original due date.* When an extension is requested as provided by Iowa Code section 422.21, the total amount of estimated tax must be paid on or before the due date for filing the return.

39.5(4) *Balance of tax due.* If the computation on the tax return shows additional tax due, it shall be paid in full with the filing of the return.

39.5(5) *Payment of tax by uncertified checks.* The department will accept uncertified checks in payment of income taxes, provided the checks are collectible for their full amount without any deduction for exchange or other charges. The date on which the department receives the check will be considered the date of payment, so far as the taxpayer is concerned, unless the check is returned dishonored. If one check is remitted to cover two or more individuals' taxes, the remittance must be accompanied by a letter of transmittal stating: *(a)* the name of the drawer of the check; *(b)* the amount of the check; *(c)* the amount of any cash, money order or other instrument included in the same remittance; *(d)* the name of each individual whose tax is to be paid by the remittance; and *(e)* the amount of payment on account of each individual.

39.5(6) *Procedure with respect to dishonored checks.* If any check is returned unpaid, all expenses incidental to the collection thereof will be charged to the taxpayer. If any taxpayer whose check has been returned by the depository bank uncollected should fail at once to make that check good, the director will proceed to collect the tax as though no check has been given. A taxpayer who tenders a certified check in payment for taxes is not relieved from obligation until the check has been paid.

39.5(7) *Penalty and interest.* In computing penalty and interest for failing to file a timely return or to pay the tax, refer to 701—Chapter 44.

39.5(8) *Five thousand dollar exemption.* Rescinded IAB 11/24/04, effective 12/29/04.

39.5(9) *Seven thousand five hundred dollar exemption.* Rescinded IAB 11/24/04, effective 12/29/04.

39.5(10) *Thirteen thousand five hundred dollar exemption.* For tax years beginning on or after January 1, 1993, all taxpayers except single taxpayers described in subrule 39.4(1), whose net income as computed under Iowa Code section 422.7, plus the amount of a lump-sum distribution for which the taxpayer has elected to be separately taxed for federal income tax purposes, is $13,500 or less are exempt from paying Iowa individual income tax subject to the following conditions:

a. In the case of married taxpayers, the incomes of both spouses are considered in order to determine if the taxpayers qualify for exemption from tax. However, in the case of married taxpayers where one spouse has a net operating loss and the taxpayers file separate Iowa returns or separately on the combined return form, the taxpayers cannot receive the benefit of the exemption from tax if the spouse with the loss elects to carry back or carry forward that loss.

b. An individual claimed as a dependent on another person's return with an income of at least $5,000 ($4,000 for tax years beginning in 1993 but before 2001) but not more than $13,500 will be exempt from Iowa tax if:

(1) The person on whose return the dependent is claimed is filing as a single individual and has a net income of $9,000 or less, or

(2) The person on whose return the dependent is claimed and the person's spouse have a combined net income of $13,500 or less.

(3) The person on whose return the dependent is claimed is filing as a head of household or as a surviving spouse and has a net income of $13,500 or less.

c. If the payment of tax would reduce the net income to less than $13,500, the tax shall be reduced to an amount which would allow the taxpayer to retain a net income of $13,500. Example: If a taxpayer's net income was $13,600 and the computed tax after personal exemptions and other credits was $300, the payment of $300 would reduce the income below $13,500; therefore, the amount of tax is reduced to $100 so the taxpayer can retain a net income of $13,500.

39.5(11) *Nine thousand dollar exemption.* For tax years beginning on or after January 1, 1993, single taxpayers described in subrule 39.4(1), whose net income as computed under Iowa Code section 422.7, plus the amount of a lump-sum distribution for which the taxpayer has elected to be separately taxed for federal income tax purposes is $9,000 or less, are exempt from paying Iowa individual income tax subject to the following conditions:

a. An individual claimed as a dependent on another person's return with an income of at least $5,000 ($4,000 for tax years beginning in 1993 but before 2001) but not more than $9,000 will be exempt from tax if:

(1) The person on whose return the dependent is claimed has a net income of $9,000 or less, or

(2) The person on whose return the dependent is claimed and the person's spouse have a combined net income of $13,500 or less.

(3) The person on whose return the dependent is claimed is filing as a head of household or as a surviving spouse and has a net income of $13,500 or less.

b. If the payment of tax would reduce the net income to less than $9,000, the tax is reduced to an amount which will allow the taxpayer to retain a net income of $9,000.

39.5(12) *Exemptions for taxpayers 65 years of age or older for tax years beginning on or after January 1, 2007, but before January 1, 2009.*

a. All taxpayers except single taxpayers described in subrule 39.4(1) who are 65 years of age or older on December 31 of the tax year and whose net income as computed under Iowa Code section 422.7, plus the amount of a lump-sum distribution for which the taxpayer has elected to be separately taxed for federal income tax purposes, the partial exclusion of pension and other retirement benefits described in rule 701—40.47(422), and the phase-out exclusion for social security benefits described in 701—subrule 40.23(3) is $24,000 or less are exempt from paying Iowa individual income tax subject to the conditions set forth below:

(1) In the case of married taxpayers, the incomes of both spouses are considered in order to determine if the taxpayers qualify for exemption from tax. For purposes of this subrule, only one spouse is required to be 65 years of age or older by December 31 of the tax year. However, in the case of married taxpayers when one spouse has a net operating loss and the taxpayers file separate Iowa returns or separately on the combined return, the taxpayers cannot receive the benefit of the exemption from tax if the spouse with the loss elects to carry back or carry forward that loss.

(2) An individual claimed as a dependent on another person's return with an income of at least $5,000, but not more than $24,000, will be exempt from Iowa tax if:

1. The person on whose return the dependent is claimed is filing as a single individual and has a net income of $9,000 or less ($18,000 or less if the person is 65 years of age or older); or

2. The person on whose return the dependent is claimed and the person's spouse have a combined net income of $13,500 or less ($24,000 or less of the combined income of the person and the person's spouse if at least one spouse is 65 years of age or older); or

3. The person on whose return the dependent is claimed is filing as a head of household or as a surviving spouse and has a net income of $13,500 or less ($24,000 or less if the person is 65 years of age or older).

(3) If the payment of tax would reduce the net income to less than $24,000, the tax shall be reduced to an amount which would allow the taxpayer to retain a net income of $24,000.

EXAMPLE: If a taxpayer's net income was $24,100 and the computed tax after personal exemptions and other credits was $300, the payment of $300 would reduce the income below $24,000; therefore, the amount of tax is reduced to $100 in order for the taxpayer to retain a net income of $24,000.

b. Single taxpayers described in subrule 39.4(1) whose net income, as computed under Iowa Code section 422.7, plus the amount of a lump-sum distribution for which the taxpayer has elected to be separately taxed for federal income tax purposes, the partial exclusion of pension and other retirement benefits described in rule 701—40.47(422), and the phase-out exclusion for social security benefits described in 701—subrule 40.23(3) is $18,000 or less are exempt from paying Iowa individual income tax subject to the conditions set forth in paragraphs *"c"* and *"d"* below:

c. An individual claimed as a dependent on another person's return with an income of at least $5,000, but not more than $18,000, will be exempt from tax if:

(1) The person on whose return the dependent is claimed has a net income of $9,000 or less ($18,000 or less if the person is 65 years of age or older); or

(2) The person on whose return the dependent is claimed and the person's spouse have a combined net income of $13,500 or less ($24,000 or less of the combined income of the person and the person's spouse if at least one spouse is 65 years of age or older); or

(3) The person on whose return the dependent is claimed is filing as a head of household or as a surviving spouse and has a net income of $13,500 or less ($24,000 or less if the person is 65 years of age or older).

d. If the payment of tax would reduce the net income to less than $18,000, the tax is reduced to an amount which will allow the taxpayer to retain a net income of $18,000.

39.5(13) *Exemptions for taxpayers 65 years of age or older for tax years beginning on or after January 1, 2009.*

a. All taxpayers except single taxpayers described in subrule 39.4(1) who are at least 65 years of age or older on December 31 of the tax year and whose net income as computed under Iowa Code section 422.7, plus the amount of a lump-sum distribution for which the taxpayer has elected to be separately taxed for federal income tax purposes, the partial exclusion of pension and other retirement benefits described in rule 701—40.47(422), and the phase-out exclusion for social security benefits described in 701—subrule 40.23(3) is $32,000 or less are exempt from paying Iowa individual income tax subject to the conditions set forth below:

(1) In the case of married taxpayers, the incomes of both spouses are considered in order to determine if the taxpayers qualify for exemption from tax. For purposes of this subrule, only one spouse is required to be 65 years of age or older by December 31 of the tax year. However, in the case of married taxpayers when one spouse has a net operating loss and the taxpayers file separate Iowa returns

or separately on the combined return form, the taxpayers cannot receive the benefit of the exemption from tax if the spouse with the loss elects to carry back or carry forward that loss.

(2) An individual claimed as a dependent on another person's return with an income of at least $5,000, but not more than $32,000, will be exempt from Iowa tax if:

1. The person on whose return the dependent is claimed is filing as a single individual and has a net income of $9,000 or less ($24,000 or less if the person is 65 years of age or older); or

2. The person on whose return the dependent is claimed and the person's spouse have a combined net income of $13,500 or less ($32,000 or less of the combined income of the person and the person's spouse if at least one spouse is 65 years of age or older); or

3. The person on whose return the dependent is claimed is filing as a head of household or as a surviving spouse and has a net income of $13,500 or less ($32,000 or less if the person is 65 years of age or older).

(3) If the payment of tax would reduce the net income to less than $32,000, the tax shall be reduced to an amount which would allow the taxpayer to retain a net income of $32,000.

EXAMPLE: If a taxpayer's net income was $32,100 and the computed tax after personal exemptions and other credits was $300, the payment of $300 would reduce the income below $32,000; therefore, the amount of tax is reduced to $100 in order for the taxpayer to retain a net income of $32,000.

b. Single taxpayers described in subrule 39.4(1) whose net income, as computed under Iowa Code section 422.7, plus the amount of a lump-sum distribution for which the taxpayer has elected to be separately taxed for federal income tax purposes, the partial exclusion of pension and other retirement benefits described in rule 701—40.47(422), and the phase-out exclusion for social security benefits described in 701—subrule 40.23(3) is $24,000 or less are exempt from paying Iowa individual income tax subject to the conditions set forth in paragraphs *"c"* and *"d"* below:

c. An individual claimed as a dependent on another person's return with an income of at least $5,000, but not more than $24,000, will be exempt from tax if:

(1) The person on whose return the dependent is claimed has a net income of $9,000 or less ($24,000 or less if the person is 65 years of age or older); or

(2) The person on whose return the dependent is claimed and the person's spouse have a combined net income of $13,500 or less ($32,000 or less of the combined income of the person and the person's spouse if at least one spouse is 65 years of age or older); or

(3) The person on whose return the dependent is claimed is filing as a head of household or as a surviving spouse and has a net income of $13,500 or less ($32,000 or less if the person is 65 years of age or older).

d. If the payment of tax would reduce the net income to less than $24,000, the tax is reduced to an amount which will allow the taxpayer to retain a net income of $24,000.

This rule is intended to implement Iowa Code section 422.5 as amended by 2006 Iowa Acts, Senate File 2408, and sections 422.16, 422.17, 422.21, 422.24, and 422.25.

701—39.6(422) Minimum tax.

39.6(1) *Minimum tax for tax years beginning on or after 1982, but before 1985.* Rescinded IAB 11/24/04, effective 12/29/04.

39.6(2) *Minimum tax for tax years beginning on or after January 1, 1985, but before January 1, 1987.* Rescinded IAB 11/24/04, effective 12/29/04.

39.6(3) *Minimum tax for tax years beginning on or after January 1, 1987.*

a. Method for computation of the minimum tax. For tax years beginning on or after January 1, 1987, the minimum tax is imposed only to the extent that the minimum tax exceeds the taxpayer's regular income tax liability. The minimum tax rate is 75 percent of the maximum regular tax rate for individual income tax. For tax years beginning on or after January 1, 1987, through December 31, 1997, the tax rate is 7.5 percent of the taxpayer's minimum taxable income. For tax years beginning on or after January 1, 1998, the tax rate is 6.7 percent of the taxpayer's minimum taxable income. Minimum taxable income is computed as follows:

	Iowa Taxable Income
Plus:	*Applicable Adjustments and **Tax Preference Items (from Form IA 6251)
	Subtotal
Less:	***Applicable Exemption Amount
	Minimum Taxable Income

(1) *The federal adjustments that are also applicable in computing state minimum taxable income are:

1. Depreciation of property placed in service after 1986.
2. Circulation and research and experimental expenditures paid or incurred after 1986.
3. Mining, exploration, and development costs paid or incurred after 1986.
4. Long-term contracts entered into after 2-28-86.
5. Pollution control facilities placed in service after 1986.
6. Installment sales of certain property.
7. Basis adjustment.
8. Certain loss limitations.
9. Tax shelter farm loss.
10. Passive activity loss.
11. Adjustments related to beneficiaries of estates and trusts.

(2) **The federal tax preference items which are also applicable in computing state minimum taxable income are:

1. Accelerated depreciation of real property placed in service before 1987.
2. Accelerated depreciation on leased personal property placed in service before 1987.
3. Amortization of certified pollution control facilities placed in service before 1987.
4. Appreciated property charitable deduction.
5. Incentive stock options.
6. Reserves for losses on bad debts of financial institutions.

For tax periods ending on or after September 10, 2001, any federal adjustments or tax preference items that are determined based on a percentage of taxpayer's federal adjusted gross income may have to be adjusted for Iowa alternative minimum tax purposes. These adjustments and preferences for Iowa alternative minimum tax purposes are based on federal adjusted gross income as adjusted by the disallowance of the additional first-year depreciation allowance authorized in Section 168(k) of the Internal Revenue Code as described in rule 701—40.60(422).

(3) ***Exemption amounts are: $17,500 for a married person filing a separate return or separately on the combined return form or for an estate or trust; $26,000 for a single person or a head of household or qualifying widow(er); $35,000 for a married couple filing a joint return. However, the applicable exemption amounts will be reduced, but not below zero, by 25 percent of the amount by which the minimum taxable income of the taxpayer determined without the exemption amount exceeds the following amounts: $75,000 for a married taxpayer filing separate returns or separately on the combined return or for an estate or a trust; $112,500 for a single person, a head of household, or a surviving spouse (qualifying widow(er)); $150,000 for a married couple that files a joint state return.

The following two examples illustrate how the minimum tax is computed for tax years beginning on or after January 1, 1987:

EXAMPLE 1. Taxpayers A had an Iowa income tax liability of $9,375 from a taxable income of $100,000 in 1987. The A's were filing a joint return and had tax preferences of $60,000 from an appreciated property charitable deduction. The A's minimum tax liability is shown below:

	Iowa Taxable Income	$100,000
Plus:	Tax Preference Items and Adjustments	60,000
	Subtotal	160,000
Less:	Exemption Amount	35,000
	Minimum Taxable Income	$125,000

		× .075
	Computed Minimum Tax	$ 9,375
Less:	Regular Tax	8,648
	Minimum Tax Liability	$ 727

Since the A's minimum tax liability exceeded their regular tax by $727, they had a minimum tax liability of $727 in 1987.

EXAMPLE 2. Ms. B was a single taxpayer in 1987. She had a regular income tax liability of $9,375 on taxable income of $100,000. She had an adjustment of $50,000 from a passive activity loss. Ms. B's minimum tax liability is shown below:

	Iowa Taxable Income	$100,000
Plus:	Tax Preference Items and Adjustments	50,000
	Subtotal	$150,000
Less:	Exemption Amount	35,000
	Subtotal	$115,000
Plus:	Reduction in Exemption Amount	9,375
	(25% of $37,500)	
	Minimum Taxable Income	$124,375
		× .075
	Computed Minimum Tax	$ 9,328
Less:	Regular Tax	8,648
	Minimum Tax Liability	$ 680

Ms. B had a minimum tax liability of $680 in 1987 because the minimum tax exceeded the regular tax for 1987 by $680.

b. Net operating loss computed for a year beginning after 1982 which is carried back or carried forward to the current taxable year. In the case of a net operating loss computed for a tax year beginning after December 31, 1982, which is carried back or carried forward to the current tax year, the net operating loss shall be reduced by the amount of tax preferences and adjustments arising in the current tax year.

c. Net operating loss deduction for tax years beginning after December 31, 1986. The deduction for a net operating loss for a tax year beginning after December 31, 1986, which is carried back or carried forward to another tax year shall not exceed 90 percent of the minimum taxable income computed for the tax year without the net operating loss. The computation of minimum taxable income is described in paragraph *"a"* of this subrule.

d. Apportionment of minimum tax for nonresidents and part-year residents and nonresident and part-year resident estates or trusts. In the case of resident taxpayers, including estates or trusts domiciled in Iowa for the entire tax year, the taxpayers are subject to 100 percent of the minimum tax computed as described in paragraph *"a"* of this subrule. In the case of nonresidents of Iowa including nonresident estates and trusts and individuals, including estates and trusts domiciled in Iowa for less than the entire tax year, the minimum tax computed according to paragraph *"a"* of this subrule less applicable credits against tax is allocated to Iowa as shown below:

$$\text{State Minimum Tax Less Credits} \times \frac{\text{Iowa Source Net Income Plus Tax Preferences, Adjustments and Losses Attributable to Iowa}}{\text{Total Net Income Plus All Tax Preferences, Adjustments and Losses}}$$

For purposes of this computation, only those adjustments, tax preferences, and losses shown on Form IA 6251 are applicable for determining which items shall be included in the numerator and the denominator.

e. Allocation of the state minimum tax between married couples filing separate returns or separately on the combined return form. Married taxpayers electing to file separate returns or separately on the combined return form must allocate the minimum tax between them in the proportion that each spouse's respective preference items, adjustments, and losses relate to the preference items, adjustments and losses of both spouses.

This rule is intended to implement Iowa Code section 422.5 as amended by 2003 Iowa Acts, Senate File 442.

701—39.7(422) Tax on lump-sum distributions. For tax years beginning on or after January 1, 1982, Iowa Code section 422.5 provides that in addition to the tax computed on the taxable income, a tax shall also be imposed on the amount of a lump-sum distribution for which the taxpayer has elected under Section 402(e) of the Internal Revenue Code to be separately taxed for federal income tax purposes for the tax year. The rate of this tax is 25 percent of the separate federal tax imposed on the amount of the lump-sum distribution.

39.7(1) *Exemption amounts.*

a. An exemption of $9,000 for single taxpayers and an exemption of $13,500 for all other taxpayers. To be eligible for the $9,000 or less exemption for single taxpayers and the $13,500 or less exemption for all other taxpayers as provided in Iowa Code section 422.5, subsection 2, the total amount of a lump-sum distribution subject to the separate federal tax must be included in the net income. If this net income (including the lump-sum distribution income) is less than $9,000 for single taxpayers and less than $13,500 for all other taxpayers, then no tax (other than Iowa minimum tax) is due. The Iowa tax on lump-sum distributions and the computed tax may be limited to the amount of income tax that exceeds $9,000 for single taxpayers and $13,500 for all other taxpayers (including the lump-sum distribution income).

EXAMPLE: If the net income of a single taxpayer including a lump-sum distribution was $9,030 and the computed tax and lump-sum tax was $50 after personal exemptions and out-of-state credit, the payment of $50 tax would reduce the income below $9,000; therefore, the amount of tax due is reduced to $30 in order for the taxpayer to retain a net income of $9,000.

b. An exemption of $18,000 for single taxpayers and an exemption of $24,000 for other taxpayers who are 65 years of age or older. These exemption amounts apply for tax years beginning on or after January 1, 2007, but before January 1, 2009. To be eligible for the $18,000 or less exemption for single taxpayers and the $24,000 or less exemption for all other taxpayers as provided in Iowa Code section 422.5, subsection 2A, the total amount of a lump-sum distribution subject to the separate federal tax must be included in the net income. If this net income (including the lump-sum distribution income) is less than $18,000 for single taxpayers and less than $24,000 for all other taxpayers, then no tax (other than Iowa minimum tax) is due. The Iowa tax on lump-sum distributions and the computed tax may be limited to the amount of income tax that exceeds $18,000 for single taxpayers and $24,000 for all other taxpayers (including the lump-sum distribution income).

EXAMPLE: If the net income of a single taxpayer including a lump-sum distribution was $18,200 and the computed tax and lump-sum tax was $300 after personal exemptions and out-of-state credit, the payment of $300 tax would reduce the income below $18,000; therefore, the amount of tax due is reduced to $200 in order for the taxpayer to retain a net income of $18,000.

For married persons filing jointly, filing separately on a combined return or filing separate returns, only one spouse is required to be 65 years of age or older on December 31 of the tax year.

c. An exemption of $24,000 for single taxpayers and an exemption of $32,000 for all other taxpayers who are 65 years of age or older. These exemption amounts apply for tax years beginning on or after January 1, 2009. To be eligible for the $24,000 or less exemption for single taxpayers and the $32,000 or less exemption for all other taxpayers as provided in Iowa Code section 422.5, subsection 2B, the total amount of a lump-sum distribution subject to the separate federal tax must be included in the net income. If this net income (including the lump-sum distribution income) is less than $24,000 for single taxpayers and less than $32,000 for all other taxpayers, then no tax (other than Iowa minimum tax) is due. The Iowa tax on lump-sum distributions and the computed tax may be limited to the amount

of income tax that exceeds $24,000 for single taxpayers and $32,000 for all other taxpayers (including the lump-sum distribution income).

EXAMPLE: If the net income of a single taxpayer including a lump-sum distribution was $24,300 and the computed tax and lump-sum tax was $500 after personal exemptions and out-of-state credit, the payment of $500 tax would reduce the income below $24,000; therefore, the amount of tax due is reduced to $300 in order for the taxpayer to retain a net income of $24,000.

For married persons filing jointly, filing separately on a combined return or filing separate returns, only one spouse is required to be 65 years of age or older on December 31 of the tax year.

39.7(2) *Nonresidents.* A nonresident is liable for tax on a lump-sum distribution or a portion of a lump-sum distribution attributable to services performed within Iowa. If a distribution to a nonresident is attributable to services performed both within and outside Iowa, the tax must be allocated in the ratio of the income from services performed within Iowa to the total income from all services performed relating to the lump-sum distribution unless it can be shown that another method of proration would result in a more equitable amount of tax on the distribution.

39.7(3) *Penalty and interest.* In computing penalty and interest for failing to file a timely return or to pay the lump-sum tax, refer to 701—Chapter 44.

39.7(4) *Personal exemption credits.* Personal and dependent exemption credits may be applied against the separate lump-sum tax to the extent that the credits are not fully applied against the computed tax on income reported under Iowa Code section 422.7.

39.7(5) *Out-of-state tax credit.* When computing an out-of-state tax credit for a year in which tax on a lump-sum distribution has been computed separately, the amount of the lump-sum distribution on which the separate tax has been computed must be included on the Iowa gross income.

This rule is intended to implement Iowa Code section 422.5 as amended by 2006 Iowa Acts, Senate File 2408.

701—39.8(422) State income tax limited to taxpayer's net worth immediately before the distressed sale. Taxpayers whose net incomes include gains or losses from distressed sales may limit their state income tax liabilities for the tax years in which the distress sales occurred to their net worths immediately before the distressed sales. The state income tax liability of a taxpayer is the aggregate of the taxpayer's income tax plus the taxpayer's minimum tax plus the taxpayer's lump-sum tax. For purposes of this provision, a distressed sale is the forfeiture of an installment real estate contract, the transfer of real or personal property securing a debt to a creditor in cancellation of that debt, or from the sale or exchange of property as a result of actual notice of foreclosure. Proof of forfeiture of the installment real estate contract, proof of transfer of property to a creditor in cancellation of a debt, or a copy of the notice of foreclosure will constitute documentation of the distressed sale and must be made a part of the return. A copy of the balance sheet showing the taxpayer's net worth immediately before the distressed sale must also be provided with the return.

The balance sheet supporting the taxpayer's net worth must include the taxpayer's personal assets and liabilities as well as the assets of the taxpayer's farm or other business. In the case of married taxpayers, except in the case of a husband and wife who lived apart at all times during the tax year, the assets and liabilities of both spouses must be considered in determining the taxpayers' net worth immediately before the distressed sale.

This rule is intended to implement Iowa Code section 422.5.

701—39.9(422) Special tax computation for all low-income taxpayers except single taxpayers. For tax years beginning on or after January 1, 1987, a special tax computation is available for determining the state income tax liability for all low-income taxpayers except single taxpayers described in subrule 39.4(1). Under this provision, the taxpayer multiplies the net income for the tax year in excess of $13,500 for tax years beginning on or after January 1, 1993, by the maximum individual income tax rate. The tax amount computed by this procedure is then compared to the tax amount on the individual's taxable income from the tax tables or the tax-rate schedule. The taxpayer is subject to the lesser of the two tax amounts. In the case of married taxpayers electing to file separate returns or separately on the

combined return form, the incomes of both spouses must be considered for purposes of determining the tax liability from the special tax computation. For purposes of this rule, the partial exclusion of pension and other retirement benefits described in rule 701—40.47(422) and the phase-out exclusion for social security benefits described in 701—subrule 40.23(3) must be included in the net income amounts when determining the tax liability from the special tax computation. The tax liability calculated from the special tax computation is allocated between the spouses in the ratio of each spouse's net income to the combined net income of both spouses. In determining the special tax computation for taxpayers who are 65 years of age or older for tax years beginning on or after January 1, 2007, see rule 701—39.15(422).

For example, a married couple's net income in 1987 was $8,200. The taxpayers elected to file separately on the combined return form for 1987. One spouse had a net income of $6,000, the second spouse had a net income of $2,200. There was no federal income tax withheld on the wages earned by either of the taxpayers. The spouse with the net income of $6,000 had a regular income tax liability of $105. The spouse with the net income of $2,200 had a regular income tax liability of $4. The special tax computation of these taxpayers is shown below:

	Taxpayers' combined net income	$8,200
	($6,000 + $2,200)	
Less:	Income not subject to special tax	7,500
	Income subject to special tax	700
		× 9.98%
	Special tax liability for 1987	$ 70

The taxpayers' special tax liability for 1987 was $70. The special tax is imposed since it is less than the taxpayers' regular tax liability of $109. This special tax liability is allocated to each spouse on the following basis:

Spouse 1

$$\frac{\$6{,}000}{\$8{,}200} \times 70 = \$51$$

Spouse 2

$$\frac{\$2{,}200}{\$8{,}200} \times 70 = \$19$$

The special tax computation for low-income taxpayers is not available to married taxpayers filing separate state returns or to married taxpayers filing separately on the combined return form in instances where one of the spouses has a net operating loss described in Iowa Code section 422.9, subsection 3, and the spouse elects to carry back or carry forward the net operating loss. Also, the special tax computation for low-income taxpayers is not available if the taxpayer is required to annualize the taxpayer's income as described in rule 701—41.9(422).

This rule is intended to implement Iowa Code section 422.5.

701—39.10(422) Election to report excess income from sale or exchange of livestock due to drought in the next tax year. For tax years beginning on or after January 1, 1990, a taxpayer may elect to report excess income from the sale or exchange of livestock due to drought on the Iowa return for the next tax year if the taxpayer qualified for similar treatment of the excess income under Section 451(e) of the Internal Revenue Code. This election is available only to a taxpayer on the cash receipts and disbursements method of accounting whose principal trade or business is farming as described in Section 6420(c)(3) of the Internal Revenue Code. For purposes of this rule the election applies to all livestock held for sale or exchange, whether raised or purchased for resale. This election also applies to livestock used for draft, breeding, dairy, or sporting purposes which were held less than two years in the case of cattle and horses and less than one year in the case of other livestock. For purposes of this election, livestock does not include poultry.

The area in which the livestock was sold or exchanged must have been declared a disaster area due to drought. However, the sale or exchange can take place before or after the area is declared a disaster area as long as the same disaster (the drought) caused the livestock sale. In order for the election

to report excess income in the following tax year to be valid, the election must be made by the due date of the return, including extensions. Additional information about computing the excess income as well as information needed on the statement for making the election is described in Treasury Regulation §1.451-7.

This rule is intended to implement Iowa Code section 422.5.

701—39.11(422) Forgiveness of tax for an individual whose federal income tax was forgiven because the individual was killed outside the United States due to military or terroristic action. For tax years ending on or after August 2, 1990, an individual's Iowa income tax is forgiven if the person's federal income tax was forgiven because the individual was killed in a combat zone, the individual was missing in action and presumed dead, or the individual was killed outside the United States due to terrorist or military action while the person was a military or civilian employee of the United States. The Iowa income tax is forgiven on the return for the tax year in which the individual was killed or was missing and was presumed dead, and is forgiven on the return for the tax year prior to the year of death. In a situation where the person that was killed was married at the time of death, no tax will be due on the return filed for the year of death if a joint state return or a married filing separately on the combined state return is filed for that tax year. In the case of the return for the tax year prior to the year of death for the person killed in military or terrorist action, all the tax will be forgiven on the return if the person was married at the time of death and a joint state return or a married filing separate state return was filed for this prior year. However, if the person that was killed had filed a return using the married filing separately on the combined return form status, only the state income tax attributable to the person that was killed will be forgiven. The department will not honor an amended return for the prior year to change the filing status from separately on the combined return form to joint return so all the state income tax for both spouses will be forgiven.

When a state income tax return or claim for refund is filed for forgiveness of tax for an individual who was killed in military or terrorist action, a notation should be entered at the top of the return "Forgiveness of Tax—Killed in Military Action" or "Forgiveness of Tax—Killed in Terrorist Action" depending on how the individual was killed. In addition, a copy of the death certificate, or other evidence of the person's death or evidence establishing that the individual is missing in action and presumed dead, should be attached to the claim for refund or the tax return. A refund claim for forgiveness of tax will be honored only if the claim is made within the statute of limitations for refund provided in Iowa Code subsection 422.73(2).

This rule is intended to implement Iowa Code sections 422.5 and 422.73.

701—39.12(422) Tax benefits for persons in the armed forces serving in a combat zone or a qualified hazardous duty area or deployed outside the United States in a contingency operation. For tax years ending after August 2, 1990, a number of state tax benefits are authorized for persons in the armed forces who serve in an area designated by the President and the Congress as a combat zone. Similar state tax benefits are also authorized for persons who serve in an area designated by the President and the Congress as a qualified hazardous duty area for tax years beginning on or after January 1, 1999. In addition, uniform state tax benefits are authorized for persons in the armed forces of the United States who were deployed outside the United States in an operation designated by the Secretary of Defense as a contingency operation as defined in 10 U.S.C. § 101(a)(13), or which became a contingency operation by the operation of law. Persons who were deployed in a contingency operation who ceased to participate in such operation on or after May 21, 2003, are considered to be eligible individuals for purposes of being granted additional time to perform certain acts with the department to the extent the period for performing an act did not expire prior to May 21, 2003, or a later date if the person ceased to participate in the contingency operation on a date after May 21, 2003. Those persons who were serving in support of the armed forces personnel in a combat zone or those persons who were serving in support of armed forces personnel in a qualified hazardous duty area are also eligible for the state tax benefits. The eligible individuals are given the same additional time period to file state income tax returns and perform other acts related to the department of revenue as would constitute timely filing of returns or

timely performance of other acts as described in Section 7508(a) of the Internal Revenue Code. "Other acts related to the department" includes filing claims for refund for any type of tax administered by the department, making tax payments other than withholding payments, filing appeals on tax matters, filing returns for taxes other than income tax, and performing other acts such as making timely contributions to individual retirement accounts. The additional time period for filing returns and performing other acts applies to the spouse of the person who was in the combat zone or the qualified hazardous duty area or the spouse of a person who was serving in support of persons in the combat zone or the hazardous duty area to the extent the spouse files jointly or separately on the combined return with the person who was in the combat zone or the hazardous duty area, or when the spouse is a party with the person who was serving in support of persons in the combat zone or hazardous duty area to any tax matter with the department for which the additional time period is allowed. The additional time period for filing state returns and performing other acts is 180 days after the person leaves the combat zone or hazardous duty area or ceases to participate in the contingency operation which is the same time period as allowed in federal income tax law. However, a person who was hospitalized because of illness or injury in the combat zone or the hazardous duty area has up to five years to file returns or perform certain acts with this department after leaving the combat zone or hazardous duty area.

For tax years beginning on or after January 1, 1995, certain persons performing peacekeeping duties in a location designated by Congress as a qualified hazardous duty area or other individuals performing military duties overseas in support of the persons in the hazardous duty area are eligible for the tax benefits described above. See rule 39.14(422) for additional information on the Bosnia-Herzegovina hazardous duty area.

This rule is intended to implement Iowa Code sections 422.3 and 422.21 as amended by 2003 Iowa Acts, House File 674.

701—39.13(422) Electronic filing of Iowa individual income tax returns. Electronic filing allows individuals who meet qualifications set out by the department to file their Iowa income tax returns electronically. All information is electronically transmitted. Nothing is submitted on paper, unless specifically requested by the department. A taxpayer's electronic Iowa return will include the same information as if the taxpayer had filed a paper Iowa return.

There is no statutory requirement that provides that individuals must file their Iowa income tax return electronically; therefore, taxpayers have the option to file by paper. The department may provide a variety of paperless filing options and will determine the criteria for each option on an annual basis. These options may include electronic filing, TeleFiling, or WebFiling.

39.13(1) *Definitions.* For the purpose of this rule, the following definitions apply, unless the context otherwise requires:

"Acknowledgment (ACK)" means a report generated by the department and sent to a transmitter indicating receipt of all transmissions.

"Declaration control number (DCN)" means a unique 14-digit number assigned by the ERO or transmitter to each electronic return.

"Department" means the Iowa department of revenue.

"Direct deposit" means an electronic transfer of a refund into a taxpayer's financial institution account.

"Electronic filing" means any paperless filing option approved by the department, including federal/state electronic filing (piggyback), federal/state electronic filing (state-only), TeleFile, and WebFile.

"Electronic return originator (ERO)" means an entity that originates the electronic submission of income tax returns.

"Federal/state electronic filing (piggyback)" means a process that allows the federal and state income tax returns to be simultaneously filed electronically.

"Federal/state electronic filing (state-only)" means a process that allows the Iowa income tax return to be filed electronically without filing the federal return, but an electronic copy of the federal information is still sent to Iowa. Current-year amended returns may also be filed using this process.

"IA 8453" means a taxpayer declaration form that authenticates the electronic IA 1040, authorizes its transmission, and designates payment method of any refund, including consent to direct deposit if requested.

"PIN signature alternative" means a process that allows filing a completely paperless tax return. The 5-digit PIN number is selected by the taxpayer and input by the ERO.

"Software developer" means an E-file provider that, according to IRS and Iowa specifications, develops software for the purposes of formatting electronic portions of returns or transmitting the electronic portions of returns directly to the IRS, or both. A software developer may also sell its software.

"Stockpiling" means collecting returns from taxpayers or from other electronic filers and waiting more than three calendar days to transmit the returns to the department after receiving the information necessary for transmission.

"TeleFile" means a process that allows taxpayers to file Iowa income tax returns by telephone.

"Transmitter" means an E-file provider that transmits electronic portions of returns directly to the IRS.

"WebFile" means a process that allows taxpayers to file Iowa tax returns over the Internet at the department's Web site.

39.13(2) *Completion of the electronic return.* All amounts must be in whole dollars and must match the information on the electronic record for the return. The DCN on the state return must match that used on the taxpayer's federal return when filing piggyback. The department has adopted the PIN signature alternative as implemented by the IRS. If the ERO elects not to use this signature alternative, the IA 8453 must be completed, signed by the preparer, ERO, and taxpayer(s) and retained by the preparer. The PIN signature alternative is not an option for state-only returns.

If the ERO makes changes to the electronic return after the taxpayer(s) has signed the return but before it is transmitted, and the net income differs by more than $50 or any of the other amounts on the IA 8453 differ by more than $14, a new form must be completed and signed by the taxpayer(s) before the return is transmitted.

The ERO must provide the taxpayer with the following information: copy of the data transmitted, copies of the IA 8453, W-2s, 1099s, and any other schedules. The ERO should also provide a payment voucher and mailing address, if applicable.

The taxpayer and ERO shall retain all tax documentation for three years. The IA 8453 must be signed by the taxpayer(s), preparer and ERO unless the PIN signature alternative is used. The IA 8453 and accompanying schedules are to be furnished to the department only when specifically requested.

In situations in which the ERO ceases operation, the ERO is required to send the IA 8453 forms and all supporting documents to the department, if the income tax return is dated within three years from the due date or date filed. If the ERO is unable to retain the IA 8453 forms and all supporting documents, the ERO may request permission to deliver them to the department.

39.13(3) *Direct deposit.* Taxpayers may designate direct deposit of the Iowa refund on electronically filed returns. Taxpayers must provide proof of account ownership to the ERO. The department is not responsible for the misapplication of a direct deposit of a refund caused by error, negligence, or wrongdoing on the part of the taxpayer, electronic filer, financial institution or any agent of the above. The account designated to receive the direct deposit must be in the taxpayer's name. If the taxpayer's filing status on the return is "married filing a joint return" or "married filing separately on this combined return," the account may be in either spouse's name or both spouses' names. If the filing status is married filing separately, the account may be in the taxpayer's name or may be a joint account in both spouses' names. If the filing status is "married filing separate returns," a direct deposit cannot be made if the account is only in the name of the other spouse.

The taxpayer's signature or taxpayers' signatures on the IA 8453 provide irrevocable approval of a direct deposit. Once the return has been transmitted, the direct deposit information may not be corrected. The department may, when processing procedures require, convert a request for direct deposit to a paper warrant. If refunds are sent to an incorrect bank account, the department will issue a paper refund check once the funds are returned by the financial institution.

39.13(4) *Software approval.* Software developers are required to submit a letter of intent, including the name, address, and telephone number of a contact person and a copy of IRS Form 8633 (Application to Participate in the Electronic Filing Program) in order to be considered for participation in the Iowa electronic filing program. The department will provide an application form, specifications, test package and procedures for companies wishing to develop software for electronic filing of Iowa returns. Specifications for the software developers are explained in IRS Publication 1346 and Iowa Publication 16-107, "Electronic Return File Specifications and Record Layouts." The developers will also be provided with test data and instructions so that developers may test their programs for processing electronic returns with the department. Software developers are required to pass transmission tests before the developers' software will be approved for electronic filing of Iowa income tax returns. The test period shall be defined annually by the department.

39.13(5) *ERO approval.* Only returns transmitted by EROs that are approved by the IRS will be accepted by the department. Once accepted by the IRS as an ERO for a specific tax year, the ERO is automatically accepted to file Iowa returns. There is no additional notification or approval process required by the department.

39.13(6) *Suspension of an electronic filer from participation in the Iowa electronic filing program.* The department may immediately suspend, without notice, an electronic filer from the Iowa electronic filing program. However, in most cases, a suspension from the Iowa electronic filing program is effective as of the date of the letter informing the electronic filer of the suspension. Before suspending an electronic filer, the department may issue a warning letter which describes specific corrective action required because of deviations from this rule.

If an electronic filer is either denied participation in the federal electronic filing program or is suspended from the federal program, the electronic filer shall automatically be prohibited from participation in the Iowa electronic filing program.

An electronic filer who is eligible to participate in the federal electronic filing program may be suspended from the Iowa electronic filing program if the electronic filer has allowed any of the following conditions to occur. This list is not all-inclusive.

a. Deterioration in the format of transmissions of individual Iowa returns;

b. Unacceptable cumulative error or rejection rate or failure to correct errors in transmission of Iowa returns;

c. Untimely received, illegible, incomplete, missing, or unapproved substitute IA 8453 forms;

d. Stockpiling returns at any time while participating in the Iowa electronic filing program;

e. Failure on the part of the transmitter to retrieve an acknowledgment file within two working days of transmission by the department;

f. Failure on the part of the transmitter to initiate the communication of acknowledgment files to the electronic return originator (ERO) within two working days of transmission by the department;

g. Significant complaints about the electronic filer;

h. Failure on the part of the electronic filer to cooperate with the department's efforts to monitor electronic filers, investigate electronic filing abuse, and investigate the possible filing of fraudulent returns;

i. Submitting the electronic portion of a return with information which is not identical to information on the IA 8453;

j. Transmitting the Iowa return with software that was not approved for use in the Iowa electronic filing program;

k. Failure on the part of the electronic filer to provide W-2s, 1099s, or out-of-state tax returns when requested.

39.13(7) *Administrative procedure for denial of an electronic filer's participation in the Iowa electronic filing program or for suspension of an electronic filer from the Iowa electronic filing program.* In a situation in which an electronic filer has requested participation in the Iowa electronic filing program but there is a reason to deny the electronic filer's participation, the department will send the electronic filer a letter to advise that the electronic filer will be denied entry into the program. In another situation in which an electronic filer is a participant in the Iowa electronic filing program

but the electronic filer is to be suspended from the program for any conditions described in subrule 39.13(6), the department will send the electronic filer a letter to notify the filer about the electronic filer's suspension from the program.

In cases in which the electronic filer either disagrees with the denial of participation letter or the suspension from participation letter, the electronic filer must file a written protest to the department within 60 days of the date of the denial letter or the suspension letter. The written protest must be filed pursuant to rule 701—7.41(17A). During the administrative review process, the denial of an electronic filer's participation in or the suspension of an electronic filer from the Iowa electronic filing program will remain in effect.

This rule is intended to implement Iowa Code sections 422.21 and 422.68.

701—39.14(422) Tax benefits for persons serving in support of the Bosnia-Herzegovina hazardous duty area. For tax years beginning on or after January 1, 1995, a number of state tax benefits are authorized for individuals serving in a location designated by the President and Congress as a qualified hazardous duty area or other persons serving in support of the individuals in the hazardous duty area. Public Law No. 104-117 was enacted by Congress on March 20, 1996, and designated Bosnia, Herzegovina, Croatia, and Macedonia as a qualified hazardous duty area so that troops performing peacekeeping duties in the area would be eligible for tax benefits for federal income tax purposes on the same basis they would have been eligible for the same benefits if they had served in a combat zone under prior law.

For Iowa tax purposes, persons serving peacekeeping duties in the hazardous duty area or other persons serving overseas in support of the persons in the hazardous duty area will be eligible for the same tax benefits that were previously only available to persons serving military duties in a combat zone. The tax benefits that are available for persons serving in the hazardous duty area or persons serving overseas in support of the persons in the hazardous duty area are described in rule 39.12(422).

This rule is intended to implement Iowa Code section 422.3 as amended by 1996 Iowa Acts, Senate File 2168.

701—39.15(422) Special tax computation for taxpayers who are 65 years of age or older.

39.15(1) *Tax years beginning on or after January 1, 2007, but before January 1, 2009.* A special tax computation is available for determining the state income tax liability for certain taxpayers, except single taxpayers described in subrule 39.4(1), who are 65 years of age or older. For married persons filing jointly, filing separately on a combined return or filing separate returns, only one spouse is required to be 65 years of age or older on December 31 of the tax year. Under this provision, the taxpayer multiplies the net income for the tax year in excess of $24,000 by the maximum individual income tax rate. The tax amount computed by this procedure is then compared to the tax amount on the individual's taxable income from the tax tables or the tax-rate schedule. The taxpayer is subject to the lesser of the two tax amounts. In the case of married taxpayers electing to file separate returns or separately on the combined return, the incomes of both spouses must be considered for purposes of determining the tax liability from the special tax computation. The tax liability calculated from the special tax computation is allocated between the spouses in the ratio of each spouse's net income to the combined net income of both spouses. For purposes of this rule, the partial exclusion of pension and other retirement benefits described in rule 701—40.47(422) and the phase-out exclusion for social security benefits described in 701—subrule 40.23(3) must be included in the net income amounts when determining the tax liability from the special tax computation.

EXAMPLE: A married couple had gross income, which included pensions, of $27,000 for 2007, and they elected to file separately on a combined return. One spouse had gross income of $15,000, and the other spouse had gross income of $12,000. Only one spouse was 65 years of age as of December 31, 2007. Each spouse was able to claim a $6,000 pension exclusion in accordance with rule 701—40.47(422). The one spouse with a net income of $9,000 had a regular tax liability of $229, and the other spouse with a net income of $6,000 had a regular tax liability of $70 for a total regular tax liability in the amount of $299. The special tax computation of these taxpayers is shown below:

Taxpayers' combined net income after pension exclusion	$15,000
Pension Exclusion	$12,000
Total Income	$27,000
Less: Income not subject to special tax	$24,000
Income subject to special tax	$3,000
Maximum Individual Income Tax Rate	8.98%
Special Tax Liability for 2007	$269

Since the taxpayers' special tax liability for 2007 was $269, this tax was imposed since it was less than the taxpayers' regular tax liability of $299. This special tax liability is allocated to each spouse on the following basis:

Spouse 1

$$\frac{\$15{,}000}{\$27{,}000} \times \$269 = \$149$$

Spouse 2

$$\frac{\$12{,}000}{\$27{,}000} \times \$269 = \$120$$

The special tax computation for low-income taxpayers is not available to married taxpayers filing separate state returns or to married taxpayers filing separately on the combined return form in instances where one of the spouses has a net operating loss described in Iowa Code section 422.9, subsection 3, and the spouse elects to carry back or carry forward the net operating loss. Also, the special tax computation for low-income taxpayers is not available if the taxpayer is required to annualize the taxpayer's income as described in rule 701—41.9(422).

39.15(2) *Tax years beginning on or after January 1, 2009.* A special tax computation is available for determining the state income tax liability for certain taxpayers, except single taxpayers described in subrule 39.4(1), who are 65 years of age or older. For married persons filing jointly, filing separately on a combined return or filing separate returns, only one spouse is required to be 65 years of age or older on December 31 of the tax year. Under this provision, the taxpayer multiplies the net income for the tax year in excess of $32,000 by the maximum individual income tax rate. The tax amount computed by this procedure is then compared to the tax amount on the individual's taxable income from the tax tables or the tax-rate schedule. The taxpayer is subject to the lesser of the two tax amounts. In the case of married taxpayers electing to file separate returns or separately on the combined return, the incomes of both spouses must be considered for purposes of determining the tax liability from the special tax computation. The tax liability calculated from the special tax computation is allocated between the spouses in the ratio of each spouse's net income to the combined net income of both spouses. For purposes of this rule, the partial exclusion of pension and other retirement benefits described in rule 701—40.47(422) and the phase-out exclusion for social security benefits described in 701—subrule 40.23(3) must be included in the net income amounts when determining the tax liability from the special tax computation.

The special tax computation for low-income taxpayers is not available to married taxpayers filing separate state returns or to married taxpayers filing separately on the combined return form in instances when one of the spouses has a net operating loss described in Iowa Code section 422.9, subsection 3, and the spouse elects to carry back or carry forward the net operating loss. Also, the special tax computation for low-income taxpayers is not available if the taxpayer is required to annualize the taxpayer's income as described in rule 701—41.9(422).

This rule is intended to implement Iowa Code section 422.5 as amended by 2006 Iowa Acts, Senate File 2408.

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◊ Two or more ARCs

CHAPTER 40
DETERMINATION OF NET INCOME
[Prior to 12/17/86, Revenue Department[730]]

701—40.1(422) Net income defined. Net income for state individual income tax purposes shall mean federal adjusted gross income as properly computed under the Internal Revenue Code and shall include the adjustments in 40.2(422) to 40.9(422). The remaining provisions of this rule and 40.12(422) to 40.72(422) shall also be applicable in determining net income.

This rule is intended to implement Iowa Code section 422.7.

701—40.2(422) Interest and dividends from federal securities. For individual income tax purposes, the state is prohibited by federal law from taxing dividends from corporations owned or sponsored by the federal government, or interest derived from obligations of the United States and its possessions, agencies, and instrumentalities. Therefore, if the federal adjusted gross income of an individual, taxable by Iowa, includes dividends or interest of this type, an adjustment must be made by deducting the amount of the dividend or interest. If the inclusion of an amount of income or the amount of a deduction is based upon federal adjusted gross income and federal adjusted gross income includes dividends from corporations owned or sponsored by the federal government, or interest derived from obligations of the United States and its possessions, agencies, and instrumentalities, a recomputation of the amount of income or deduction must be made excluding dividends or interest of this type from the calculations.

A federal statute exempts stocks and obligations of the United States Government, as well as the interest on the obligations, from state income taxation (see 31 USCS Section 3124(a)).

"Obligations of the United States" are those obligations issued "to secure credit to carry on the necessary functions of government." *Smith v. Davis* (1944) 323 U.S. 111, 119, 89 L.Ed. 107, 113, 65 S.Ct. 157, 161. The exemption is aimed at protecting the "borrowing" and "supremacy" clauses of the United States Constitution. *Society for Savings v. Bowers* (1955) 349 U.S. 143, 144, 99 L.Ed.2d 950, 955, 75 S.Ct. 607, 608; *Hibernia v. City and County of San Francisco* (1906) 200 U.S. 310, 313, 50 L.Ed. 495, 496, 26 S.Ct. 265, 266.

Tax-exempt credit instruments possess the following characteristics:

1. They are written documents,
2. They bear interest,
3. They are binding promises by the United States to pay specified sums at specified dates, and
4. They have Congressional authorization which also pledges the faith and credit of the United States in support of the promise to pay. *Smith v. Davis*, supra.

A governmental obligation that is secondary, indirect, or contingent, such as a guaranty of a nongovernmental obligor's primary obligation to pay the principal amount of and interest on a note, is not an obligation of the type exempted under 31 USCS Section 3124(1). *Rockford Life Ins. Co. v. Department of Revenue*, 107 S.Ct. 2312 (1987).

The following list contains widely held United States Government obligations, but is not intended to be all-inclusive.

This noninclusive listing indicates the position of the department with respect to the income tax status of the listed securities. It is based on current federal law and the interpretation thereof by the department. Federal law or the department's interpretation is subject to change. Federal law precludes all states from imposing an income tax on the interest income from direct obligations of the United States Government. Also, preemptive federal law may preclude state taxation of interest income from the securities of federal government-sponsored enterprises and agencies and from the obligations of U.S. territories. Any profit or gain on the sale or exchange of these securities is taxable.

40.2(1) Federal obligations and obligations of federal instrumentalities the interest on which is exempt from Iowa income tax.

a. United States Government obligations: United States Treasury—Principal and interest from bills, bonds, and notes issued by the United States Treasury exempt under 31 U.S.C. Section 3124[a].

1. Series E, F, G, H, and I bonds

2. United States Treasury bills
3. U.S. Government certificates
4. U.S. Government bonds
5. U.S. Government notes

b. Territorial obligations:

1. Guam—Principal and interest from bonds issued by the Government of Guam (48 USCS Section 1423[a]).
2. Puerto Rico—Principal and interest from bonds issued by the Government of Puerto Rico (48 USCS Section 745).
3. Virgin Islands—Principal and interest from bonds issued by the Government of the Virgin Islands (48 USCS Section 1403).
4. Northern Mariana Islands—Principal and interest from bonds issued by the Government of the Northern Mariana Islands (48 USCS Section 1681(c)).

c. Federal agency obligations:

1. Commodity Credit Corporation—Principal and interest from bonds, notes, debentures, and other similar obligations issued by the Commodity Credit Corporation (15 USCS Section 713a-5).
2. Banks for Cooperatives—Principal and interest from notes, debentures, and other obligations issued by Banks for Cooperatives (12 USCS Section 2134).
3. Farm Credit Banks—Principal and interest from systemwide bonds, notes, debentures, and other obligations issued jointly and severally by Banks of the Federal Farm Credit System (12 USCS Section 2023).
4. Federal Intermediate Credit Banks—Principal and interest from bonds, notes, debentures, and other obligations issued by Federal Intermediate Credit Banks (12 USCS Section 2079).
5. Federal Land Banks—Principal and interest from bonds, notes, debentures, and other obligations issued by Federal Land Banks (12 USCS Section 2055).
6. Federal Land Bank Association—Principal and interest from bonds, notes, debentures, and other obligations issued by the Federal Land Bank Association (12 USCS Section 2098).
7. Financial Assistance Corporation—Principal and interest from notes, bonds, debentures, and other obligations issued by the Financial Assistance Corporation (12 USCS Section 2278b-10[b]).
8. Production Credit Association—Principal and interest from notes, debentures, and other obligations issued by the Production Credit Association (12 USCS Section 2077).
9. Federal Deposit Insurance Corporation (FDIC)— Principal and interest from notes, bonds, debentures, and other such obligations issued by the Federal Deposit Insurance Corporation (12 USCS Section 1825).
10. Federal Financing Bank—Interest from obligations issued by the Federal Financing Bank. Considered to be United States Government obligations (12 USCS Section 2288, 31 USCS Section 3124[a]).
11. Federal Home Loan Bank—Principal and interest from notes, bonds, debentures, and other such obligations issued by any Federal Home Loan Bank and consolidated Federal Home Loan Bank bonds and debentures (12 USCS Section 1433).
12. Federal Savings and Loan Insurance Corporation (FSLIC)—Principal and interest from notes, bonds, debentures, and other such obligations issued by the Federal Savings and Loan Insurance Corporation (12 USCS Section 1725[e]).
13. Federal Financing Corporation—Principal and interest from notes, bonds, debentures, and other such obligations issued by the Federal Financing Corporation (12 USCS Section 2288(b)).
14. Financing Corporation (FICO)—Principal and interest from any obligation of the Financing Corporation (12 USCS Sections 1441[e][7] and 1433).
15. General Services Administration (GSA)—Principal and interest from General Services Administration participation certificates. Considered to be United States Government obligations (31 USCS Section 3124[a]).
16. Housing and Urban Development (HUD).

- Principal and interest from War Housing Insurance debentures (12 USCS Section 1739[d]).

- Principal and interest from Rental Housing Insurance debentures (12 USCS Section 1747g[g]).
- Principal and interest from Armed Services Mortgage Insurance debentures (12 USCS Section 1748b[f]).
- Principal and interest from National Defense Housing Insurance debentures (12 USCS Section 1750c[d]).
- Principal and interest from Mutual Mortgage Insurance Fund debentures (12 USCS Section 1710[d]).

17. National Credit Union Administration Central Liquidity Facility—Income from notes, bonds, debentures, and other obligations issued on behalf of the National Credit Union Administration Central Liquidity Facility (12 USCS Section 1795k[b]).

18. Resolution Funding Corporation—Principal and interest from obligations issued by the Resolution Funding Corporation (12 USCS Sections 1441[f][7] and 1433).

19. Student Loan Marketing Association (Sallie Mae)—Principal and interest from obligations issued by the Student Loan Marketing Association. Considered to be United States Government obligations (20 USCS Section 1087-2[1], 31 USCS Section 3124[a]).

20. Tennessee Valley Authority—Principal and interest from bonds issued by the Tennessee Valley Authority (16 USCS Section 831n-4[d]).

21. United States Postal Service—Principal and interest from obligations issued by the United States Postal Service (39 USCS Section 2005[d][4]).

22. Treasury Investment Growth Receipts.

23. Certificates on Government Receipts.

40.2(2) Taxable securities. There are a number of securities issued under the authority of an Act of Congress which are subject to the Iowa income tax. These securities may be guaranteed by the United States Treasury or supported by the issuing agency's right to borrow from the Treasury. Some may be backed by the pledge of full faith and credit of the United States Government. However, it has been determined that these securities are not direct obligations of the United States Government to pay a specified sum at a specified date, nor are the principal and interest from these securities specifically exempted from taxation by the respective authorizing Acts. Therefore, income from such securities is subject to the Iowa income tax. Examples of securities which fall into this category are those issued by the following agencies and institutions:

a. Federal agency obligations:

1. Federal or State Savings and Loan Associations
2. Export-Import Bank of the United States
3. Building and Loan Associations
4. Interest on federal income tax refunds
5. Postal Savings Account
6. Farmers Home Administration
7. Small Business Administration
8. Federal or State Credit Unions
9. Mortgage Participation Certificates
10. Federal National Mortgage Association
11. Federal Home Loan Mortgage Corporation (Freddie Mac)
12. Federal Housing Administration
13. Federal National Mortgage Association (Fannie Mae)
14. Government National Mortgage Association (Ginnie Mae)
15. Merchant Marine (Maritime Administration)

b. Obligations of international institutions:

1. Asian Development Bank
2. Inter-American Development Bank
3. International Bank for Reconstruction and Development (World Bank)

c. Other obligations:

Washington D.C. Metro Area Transit Authority

Interest from repurchase agreements involving federal securities is subject to Iowa income tax. *Nebraska Department of Revenue v. John Loewenstein*, 514 US —, 130 L.Ed.2d 470, 115 S.Ct. — (1994). *Everett v. State Dept. of Revenue and Finance*, 470 N.W.2d 13 (Iowa 1991).

For tax years beginning on or after January 1, 1987, interest from Mortgage Backed Certificate Guaranteed by Government National Mortgage Association ("Ginnie Maes") is subject to Iowa income tax. See *Rockford Life Insurance Company v. Illinois Department of Revenue*, 96 L.Ed.2d 152.

For the treatment of interest or dividends from regulated investment companies (mutual funds) that invest in obligations of the type discussed in this rule, see rule 701—40.52(422).

This rule is intended to implement Iowa Code section 422.7.

701—40.3(422) Interest and dividends from foreign securities, and securities of state and their political subdivisions. Interest and dividends from foreign securities and from securities of state and their political subdivisions are to be included in Iowa net income. Certain types of interest and dividends, because of specific exemption, are not includable in income for federal tax purposes. To the extent such income has been excluded for federal income tax purposes, unless the item of income is specifically exempted from state taxation by the laws or constitution of Iowa or of the United States, it must be added to Iowa taxable income.

The following is a noninclusive listing of bonds issued by the state of Iowa and its political subdivisions, interest on which is exempt from both federal and state income taxes.

1. Board of Regents: Bonds issued under Iowa Code sections 262.41, 262.51, 262.60, 262A.8, and 263A.6.
2. Urban Renewal: Bonds issued under Iowa Code section 403.9(2).
3. Municipal Housing Law - Low-income housing: Bonds issued under Iowa Code section 403A.12.
4. Subdistricts of soil conservation districts, revenue bonds: Bonds issued under Iowa Code section 467A.22 (transferred to Iowa Code section 161A.22 in 1993 Iowa Code).
5. Aviation authorities, revenue bonds: Bonds issued under Iowa Code section 330A.16.
6. Rural water districts: Bonds and notes issued under Iowa Code section 357A.15.
7. Iowa Alcoholic Beverage Control Act - Warehouse project: Bonds issued under Iowa Code section 123.159.
8. County Health Center: Bonds issued under Iowa Code section 331.441(2)*"c"*(7).
9. Iowa Finance Authority, Sewage treatment and drinking water facilities financing: Bonds issued under Iowa Code section 220.131(6) (transferred to Iowa Code section 16.131(6) in 1993 Iowa Code).
10. Agricultural Development Authority, Beginning farmer loan program: Bonds issued under Iowa Code section 175.17.
11. Iowa Finance Authority, Iowa comprehensive petroleum underground storage tank fund: Bonds issued under Iowa Code section 455G.6(14).
12. Iowa Finance Authority, E911 Program notes and bonds: Bonds issued under Iowa Code section 477B.20(6). (Transferred to Iowa Code section 34A.20(6) in 1993 Iowa Code.)
13. Quad Cities Interstate Metropolitan Authority Bonds: Bonds issued under Iowa Code section 330B.24. (Transferred to Iowa Code section 28A.24 in 1993 Iowa Code.)
14. Iowa Finance Authority, Municipal Investment Recovery Program: Bonds issued under Iowa Code section 220.173(4). (Transferred to Iowa Code section 16.173(4) in 1993 Iowa Code.)
15. Prison Infrastructure Revenue Bonds: Bonds issued under Iowa Code section 16.177(8).
16. Government Flood Damage Program Bonds: Bonds issued under Iowa Code section 16.183(4).
17. Iowa sewage treatment bonds: Bonds issued under Iowa Code section 16.131(6).
18. Community college residence halls and dormitories bonds: Bonds issued under Iowa Code section 260C.61.
19. Community college bond program bonds: Bonds issued under Iowa Code section 260C.71(6).
20. Regents institutions medical and hospital buildings at University of Iowa bonds: Bonds issued under Iowa Code section 263A.6.

21. Interstate bridges bonds: Bonds issued under Iowa Code section 313A.36.

22. Iowa higher education loan authority: Obligations issued by the authority on or after July 1, 2000, pursuant to either division of Iowa Code chapter 261A as authorized in Iowa Code section 261A.27.

23. Vision Iowa program: Bonds issued on or after July 1, 2000, upon request of the vision Iowa board pursuant to subsection 8 of Iowa Code section 12.71.

24. Honey Creek premier destination park bonds: Bonds issued under Iowa Code Supplement section 463C.12(8).

25. Iowa utilities board and Iowa consumer advocate building project bonds: Bonds issued under 2006 Iowa Acts, chapter 1179, section 70.

Interest from repurchase agreements involving obligations of the type discussed in this rule is subject to Iowa income tax. *Nebraska Department of Revenue v. John Loewenstein*, 514 US —, 130 L.Ed. 2d 470, 115 S.Ct. — (1994). *Everett v. State Dept. of Revenue and Finance*, 470 N.W.2d 13 (Iowa 1991).

For the treatment of interest or dividends from regulated investment companies (mutual funds) that invest in obligations of the type discussed in this rule, see rule 701—40.52(422).

Gains and losses from the sale or other disposition of bonds issued by the state of Iowa or its political subdivisions, as distinguished from interest income, shall be taxable for state income tax purposes.

This rule is intended to implement Iowa Code sections 12.71, 261A.27, and 357A.15; Iowa Code Supplement section 463C.12 as amended by 2006 Iowa Acts, chapter 1004, section 3; and Iowa Code Supplement section 422.7 as amended by 2006 Iowa Acts, chapter 1179, section 71.

701—40.4(422) Certain pensions, annuities and retirement allowances. Rescinded IAB 11/24/04, effective 12/29/04.

701—40.5(422) Military pay.

40.5(1) Rescinded IAB 6/3/98, effective 7/8/98.

40.5(2) For income received for services performed prior to January 1, 1969, and for services performed for tax periods beginning on or after January 1, 1977. An Iowa resident who is on active duty in the armed forces of the United States, as defined in Title 10, United States Code, Section 101, shall include all income received for such service performed prior to January 1, 1969, and for services performed during tax periods beginning on or after January 1, 1977. However, the taxability of this active duty military income shall be terminated for any income received for services performed effective the day after either of the two following conditions:

a. When universal compulsory military service is reinstated by the United States Congress. "Compulsory military service" is defined to be the actual act of drafting individuals into the military service and not just the registration of individuals under the Military Selective Service Act (50 App. U.S.C. 453); or

b. When a state of war is declared to exist by the United States Congress.

Federal active duty does not include a member of the national guard when called for training by order of the governor through order of the adjutant general. These members are in the service of the state and not on active duty of the United States. Federal active duty also does not include members of the various military reserve programs. A taxpayer must be on active federal duty to qualify for exemption. National guard and reservists who undergo voluntary training are not on active duty in a federal status. National guard and reservist pay does not qualify for the military exemption and such pay is taxable by the state of Iowa.

Compensation received from the United States Government by nonresident members of the armed forces who are temporarily present in the state of Iowa pursuant to military orders is exempt from Iowa income tax.

This rule is intended to implement Iowa Code section 422.5.

701—40.6(422) Interest and dividend income. This rule applies to interest and dividends from foreign securities and securities of state and other political subdivisions. Interest and dividends from foreign securities and from securities of state and other political subdivisions are to be included in Iowa taxable

income. Certain types of interest and dividends, because of specific exemption, are not included in income for federal tax purposes. To the extent such income has been excluded for federal income tax purposes, unless the term of income is specifically exempted from state taxation by the laws or constitutions of Iowa or of the United States, it must be added to Iowa taxable income.

This rule is intended to implement Iowa Code section 422.7.

701—40.7(422) Current year capital gains and losses. In determining short-term or long-term capital gain or loss the provisions of the Internal Revenue Code are to be followed.

This rule is intended to implement Iowa Code section 422.7.

701—40.8(422) Gains and losses on property acquired before January 1, 1934. When property was acquired prior to January 1, 1934, the basis as of January 1, 1934, for determining capital or other gains or losses is the higher of cost, adjusted for depreciation allowed or allowable to January 1, 1934, or fair market value as of that date.

If, as a result of this provision, a basis is to be used for purposes of Iowa individual income tax which is different from the basis used for purposes of federal income tax, appropriate adjustment must be made and detailed schedules supplied in the computation of Iowa taxable income.

This rule is intended to implement Iowa Code section 422.7.

701—40.9(422) Work opportunity tax credit and alcohol fuel credit. Where an individual claims the work opportunity tax credit under Section 51 of the Internal Revenue Code or the alcohol fuel credit under Section 40 of the Internal Revenue Code, the amount of credit allowable must be used to increase federal taxable income. The amount of credit allowable used to increase federal adjusted gross income is deductible in determining Iowa net income. The work opportunity tax credit applies to eligible individuals who begin work after September 30, 1996, and before September 1, 2011. The adjustment for the alcohol fuel credit is applicable for tax years beginning on or after January 1, 1980.

This rule is intended to implement Iowa Code section 422.7.

701—40.10(422) Exclusion of interest or dividends. Rescinded IAB 11/24/04, effective 12/29/04.

701—40.11(422) Two-earner married couple deduction. Rescinded IAB 11/24/04, effective 12/29/04.

701—40.12(422) Income from partnerships or limited liability companies. Residents engaged in a partnership or limited liability company, even if located or doing business outside the state of Iowa, are taxable upon their distributive share of net income of such partnership or limited liability company, whether distributed or not, and are required to include such distributive share in their return. A nonresident individual who is a member of a partnership or limited liability company doing business in Iowa is taxable on that portion of net income which is applicable to the Iowa business activity whether distributed or not. See 701—Chapter 45.

This rule is intended to implement Iowa Code sections 422.7, 422.8, and 422.15.

701—40.13(422) Subchapter "S" income. Where a corporation elects, under Sections 1371-1379 of the Internal Revenue Code, to distribute the corporation's income to the shareholders, the corporation's income, in its entirety, is subject to individual reporting whether or not actually distributed. Both resident and nonresident shareholders shall report their share of the corporation's net taxable income on their respective Iowa returns. *Isaacson v. Iowa State Tax Commission,* 183 N.W.2d 693, Iowa Supreme Court, February 9, 1971. Residents shall report their distributable share in total while nonresidents shall report only their portion of their distributable share which was earned in Iowa. For tax years beginning on or after January 1, 1996, residents should refer to 701—Chapter 50 to determine if they qualify to compute Iowa taxable income by allocation and apportionment. See 701—Chapter 54 for allocation and apportionment of corporate income.

This rule is intended to implement Iowa Code sections 422.7, 422.8, 422.15, and 422.36.

701—40.14(422) Contract sales. Interest derived as income from a land contract is intangible personal property and is assignable to the recipient's domicile. Gains received from the sale or assignment of land contracts are considered to be gains from real property in this state and are assignable to this state. As to nonresidents, see 40.16(422).

This rule is intended to implement Iowa Code sections 422.7 and 422.8.

701—40.15(422) Reporting of incomes by married taxpayers who file a joint federal return but elect to file separately for Iowa income tax purposes. Married taxpayers who have separate incomes and have filed jointly for federal income tax purposes can elect to file separate Iowa returns or to file separately on the combined Iowa return form. The spouses' election to file separately for Iowa income tax purposes is subject to the condition that incomes received by the taxpayers and the deductions for business expenses are allocated between the spouses as the incomes and deductions would have been allocated if the taxpayers had filed separate federal returns. Any Iowa additions to net income and any deductions to net income which pertain to taxpayers filing separately for Iowa income tax purposes must also be allocated accurately between the spouses. Thus, if married taxpayers file a joint federal return and elect to file separate Iowa returns or separately on the combined Iowa return, the taxpayers are required to compute their separate Iowa net incomes as if they had determined their federal adjusted gross incomes on separate federal returns with the Iowa adjustments to net income.

However, the fact that the taxpayers file separately for Iowa income tax purposes does not mean that the spouses will be subject to limitations that would apply if the taxpayers had filed separate federal returns. Instead, tax provisions that are applicable for taxpayers filing joint federal returns are also applicable to the taxpayers when they file separate Iowa returns unless the tax provisions are superseded by specific provisions in Iowa income tax law.

For example, married taxpayers that file separate federal returns cannot take the child and dependent care credit (in most instances) and cannot take the earned income credit. Taxpayers that file a joint federal return and elect to file separately for Iowa income tax purposes can take the child and dependent care credit and the earned income credit on their Iowa returns assuming they meet the qualifications for claiming these credits on the joint federal return.

The following paragraphs and examples are provided to clarify some issues and provide some guidance for taxpayers who filed a joint federal income tax return and elect to file separate Iowa returns or separately on the combined Iowa return form.

1. Election to expense certain depreciable business assets. When married taxpayers who have filed a joint federal return elect to file separate Iowa returns or separately on the combined Iowa return form, the taxpayers may claim the same deduction for the expensing of depreciable business assets as they were allowed on their joint federal return of up to $100,000 (for the tax year beginning on or after January 1, 2003, and which is adjusted annually for inflation for subsequent tax years) as authorized under Section 179 of the Internal Revenue Code. In a situation where one spouse is a wage earner and the second spouse has a small business, the second spouse may claim the same deduction for expensing depreciable assets of up to $100,000 (for the tax year beginning on or after January 1, 2003) that was allowable on the taxpayers' joint federal return. The fact that a spouse elects to file a separate Iowa return or separately on the combined return form after filing a joint federal return does not mean the spouse is limited to the same deduction for expensing of depreciable business assets of up to $50,000 (for the tax year beginning on or after January 1, 2003) that would have applied if the spouse had filed a separate federal return.

In situations where a married couple has ownership of a business, the deduction for the expensing of depreciable assets which is allowable on the spouses' joint federal return should be allocated between the spouses in the same ratio as incomes and losses from the business are reported by the spouses. Subrule 40.15(4) sets out criteria for allocation of incomes and losses of businesses in which married couples have an ownership interest.

2. Capital losses. Except for the Iowa capital gains deduction for limited amounts of net capital gains from certain types of assets described in rule 701—40.38(422), the federal income tax provision for reporting capital gains and losses and for the carryover of capital losses in excess of certain amounts are applicable for Iowa individual income tax purposes. When married taxpayers file a joint federal

income tax return and elect to file separate Iowa returns or separately on the combined return form, the spouses must allocate capital gains and losses between them on the basis of the ownership of the assets that were sold or exchanged. That is, the spouses must allocate the capital gains and losses between them on the separate Iowa returns as the capital gains and losses would have been allocated if the taxpayers had filed separate federal returns instead of a joint federal return. However, each spouse is not subject to the $1,500 capital loss limitation on the separate Iowa return which is applicable to a married taxpayer that files a separate federal return. Instead, the spouses are collectively subject to the same $3,000 capital loss limitation for married taxpayers filing joint federal returns which is authorized under Section 1211(b) of the Internal Revenue Code. In circumstances where both spouses have net capital losses, each of the spouses can claim a capital loss of up to $1,500 on the separate Iowa return. In a situation where one spouse has a net capital loss of less than $1,500 and the other spouse has a capital loss greater than $1,500, the first spouse can claim the entire capital loss, while the second spouse can claim the portion of the net capital loss on the joint federal return that was not claimed by the first spouse. In no case can the net capital losses claimed on separate Iowa returns by married taxpayers exceed the $3,000 maximum capital loss that is allowed on the joint federal return. In a circumstance where one spouse has a net capital loss and the other spouse has a net capital gain, the amounts of capital gains and losses claimed by the spouses on their separate Iowa returns must conform with the net capital gain amount or net capital loss amount claimed on the joint federal return for the taxpayers. The following examples illustrate how capital gains and losses are to be allocated between spouses filing separate Iowa returns or separately on the combined Iowa return form for married taxpayers who filed joint federal returns.

EXAMPLE 1. A married couple filed a joint federal return which showed a net capital loss of $3,000. All of the capital loss was attributable to the husband, as the wife had no capital gains or losses. Therefore, when the taxpayers filed separate Iowa returns, the husband's return showed a $3,000 capital loss and the wife's return showed no capital gains or losses.

EXAMPLE 2. A married couple filed a joint federal return showing a net capital loss of $3,000, which was the maximum loss they could claim, although they had aggregate capital losses of $8,000. The husband had a net capital loss of $6,000 and the wife had a net capital loss of $2,000. When the taxpayers filed their separate Iowa returns each spouse claimed a net capital loss of $1,500, since each spouse had a capital loss of up to $1,500. The husband had a net capital loss carryover of $4,500 and the wife had a net capital loss carryover of $500.

EXAMPLE 3. A married couple filed a joint federal return showing a net capital loss of $2,500. The husband had a net capital gain of $7,500 and the wife had a net capital loss of $10,000. The wife claimed a net capital loss of $10,000 on her separate Iowa return, while the husband reported a net capital gain of $7,500 on his separate Iowa return.

EXAMPLE 4. A married couple filed a joint federal return showing a net capital loss of $3,000. The wife had a net capital loss of $800 and the husband had a net capital loss of $2,500. The wife claimed a $800 net capital loss on her separate Iowa return. The husband claimed a net capital loss on his separate Iowa return of $2,200 which was the portion of the net capital loss claimed on the joint federal return that was not claimed by the wife. The husband had a net capital loss carryover of $300.

3. Unemployment compensation benefits. When a husband and wife have filed a joint federal return and elect to file separate Iowa returns or separately on the Iowa combined return form, the spouses are to report the same amount of unemployment compensation benefits on their Iowa returns as was reported for federal income tax purposes as provided in Section 85 of the Internal Revenue Code. When unemployment compensation benefits are received in the tax year the benefits are to be reported by the spouse or spouses who received the benefits as a result of employment of the spouse or spouses. Nonresidents of Iowa, including nonresidents covered by the reciprocal agreement with Illinois, are to report unemployment compensation benefits on the Iowa income tax return as Iowa source income to the extent the benefits pertain to the individual's employment in Iowa. In a situation where the unemployment compensation benefits are the result of employment in Iowa and in one or more other states, the unemployment compensation benefits should be allocated to Iowa on the basis of the individual's Iowa salaries and wages for the employer to the total salaries and wages for the employer. However, to the extent that unemployment compensation benefits pertain to a person's employment in

Iowa for a railroad and the benefits are paid by the railroad retirement board, the benefits are totally exempt from Iowa income tax pursuant to 45 U.S.C. Section 352(e).

40.15(1) *Income from property in which only one spouse has an ownership interest but which is not used in business.* If ownership of property not used in a business is in the name of only one spouse and each files a separate state return, income derived from such property may not be divided between husband and wife but must be reported by only that spouse possessing the ownership interest.

40.15(2) *Income from property in which both husband and wife have an ownership interest but which is not used in a business.* A husband and wife who file a joint federal return and elect to file separate Iowa returns must each report the share of income from jointly or commonly owned real estate, stocks, bonds, bank accounts, and other property not used in a business in the same manner as if their federal adjusted gross incomes had been determined separately. The rules for determining the manner of reporting this income depend upon the nature of the ownership interest and, in general, may be summarized as follows:

a. Joint tenants. A husband and wife owning property as joint tenants with the right of survivorship, a common example of which is a joint savings account, should each report on separate returns one-half of the income from the savings account held by them in joint tenancy.

b. Tenants in common. Income from property held by husband and wife as tenants in common is reportable by them in proportion to their legally enforceable ownership interests in the property.

40.15(3) *Salary and wages derived from personal or professional services performed in the course of employment.* A husband and wife who file a joint federal return and elect to file separate Iowa returns must report on each spouse's state return the salary and wages which are attributable to services performed pursuant to each individual's employment. The income must be reported on Iowa separate returns in the same manner as if their federal adjusted gross incomes had been determined separately. The manner of reporting wages and salaries by spouses is dependent upon the nature of the employment relationship and is subject to the following rules:

a. Interspousal employment—salary or wages paid by one spouse to the other. Wages or compensation paid for services or labor performed by one spouse with respect to property or business owned by the other spouse may be reported on a separate return if the amount of the payment is reasonable for the services or labor actually performed. It is presumed that the compensation or wages paid by one spouse to the other is not reasonable nor allowable for purposes of reporting the income separately unless a bona fide employer-employee relationship exists. For example, unless actual services are rendered, payments are actually made, working hours and standards are set and adhered to, unemployment compensation and workers' compensation requirements are met, the payments may not be separately reported by the salaried spouse.

b. Wages and salaries received by a husband or wife pursuant to an employment agreement with an employer other than a spouse. Wages or compensation paid for services or labor performed by a husband or wife pursuant to an employment agreement with some other employer is presumed income of only that spouse that is employed and must be reported separately only by that spouse.

40.15(4) *Income from a business in which both husband and wife have an ownership interest.* Income derived from a business the ownership of which is in both spouses' names, as evidenced by record title or by the existence of a bona fide partnership agreement or by other recognized method of establishing legal ownership, may be allocated between spouses and reported on separate individual state income tax returns provided that the interest of each spouse is allocated according to the capital interest of each, the management and control exercised by each, and the services performed by each with respect to such business. Compliance with the conditions contained in paragraphs *"a"* or *"b"* of this subrule and consideration of paragraphs *"c," "d,"* and *"e"* of this subrule must be made in allocating income from a business in which both husband and wife have an ownership interest.

a. Allocation of partnership income. Allocation of partnership income between spouses is presumed valid only if partnership information returns, as required for income tax purposes, have currently been filed with respect to the federal self-employment tax law. An oral understanding does not constitute a bona fide partnership implied merely from a common ownership of property.

b. Allocation of income derived from a business other than a partnership in which both husband and wife claim an ownership interest. In the case of a business owned by a husband and wife who filed

a joint federal income tax return in which one of them claimed all of the income therefrom for federal self-employment tax purposes, it will be presumed for purposes of administering the state income tax law, unless expressly shown to the contrary by the taxpayer, that the spouse who claimed that income for federal self-employment tax purposes did, thereby, with the consent of the other spouse, claim all right to such income and that therefore such income must be included in the state income tax return of the spouse who claimed it for federal self-employment tax purposes if the husband and wife file separate state income tax returns.

c. Capital contribution. In determining the weight to be attributed to the capital contribution of each spouse to a business, consideration may be given only to that invested capital which is legally traceable to each individual spouse. Capital existing under the right, dominion, and control of one spouse which is invested in the business is presumed to be a capital contribution of that spouse. Sham transactions which do not affect real changes of ownership in capital between spouses in that such transactions do not legally disturb the right, dominion, and control of the assignor or the donor over the capital must be disregarded in determining capital contribution of the recipient spouse.

d. Management and control. Participation in the control and management of a business must be distinguished from the regular performance of nonmanagerial services. Contribution of management and control with respect to the business must be of a substantial nature in order to accord it weight in making an allocation of income. Substantial participation in management does not necessarily involve continuous or even frequent presence at the place of business, but it does involve genuine consultation with respect to at least major business decisions, and it presupposes substantial acquaintance with an interest in the operations, problems, and policies of the business, along with sufficient maturity and background of education or experience to indicate an ability to grasp business problems that are appreciably commensurate with the demands of the enterprise concerned. Vague or general statements as to family discussions at home or elsewhere will not be accepted as a sufficient showing of actual consultation.

e. Services performed. The amount of services performed by each spouse is a factor to be considered in determining proper allocation of income from a business in which each spouse has an ownership interest. In order to accord weight to services performed by an individual spouse, the services must be of a beneficial nature in that they make a direct contribution to the business. For example, for a business operation, whether it is a retail sales enterprise, farming operation or otherwise, in which both husband and wife have an ownership interest, the services contributed by the spouses must be directly connected with the business operation. Services for the family such as planting and maintaining family gardens, domestic housework, cooking family meals, and routine errands and shopping, are not considered to be services performed or rendered as an incident of or a contribution to the particular business; such activities by a spouse must be disregarded in determining the allocable income attributable to that spouse.

This rule is intended to implement Iowa Code section 422.7.

701—40.16(422) Income of nonresidents. Except as otherwise provided in this rule all income of nonresidents derived from sources within Iowa is subject to Iowa income tax.

Net income received by a nonresident taxpayer from a business, trade, profession, or occupation in Iowa must be reported.

Income from the sale of property, located in Iowa, including property used in connection with the trade, profession, business or occupation of the nonresident, is taxable to Iowa even though the sale is consummated outside of Iowa, and provided that the property was sold before subsequent use outside of Iowa. Any income from the property prior to its sale is also Iowa taxable income.

Income received from a trust or an estate, where the income is from Iowa sources, is taxable, regardless of the situs of the estate or trust. Dividends received in lieu of, or in partial or full payment of, an amount of wages or salary due for services performed in Iowa by a nonresident shall be considered taxable Iowa income. Annuities, interest on bank deposits and interest-bearing obligations, and dividends are not allocated to Iowa except to the extent to which they are derived from a business, trade, profession, or occupation carried on within the state of Iowa by the nonresident.

Interest received from the sale of property, on an installment contract even though the gain from the sale of the property is subject to Iowa taxation, is not allocable to Iowa if the property is not part of the nonresident's trade, profession, business or occupation. As to residents, see 40.14(422).

40.16(1) *Nonresidents exempt from paying tax.* See 701—subrules 39.5(10) and 39.5(11) for the net income exemption amounts for nonresidents.

These provisions for reducing tax in 701—subrule 39.5(10), paragraph *"c,"* and 701—subrule 39.5(11), paragraph *"b,"* do not apply to the Iowa minimum tax which must be paid irrespective of the amount of Iowa income that an individual has.

40.16(2) *Compensation for personal services of nonresidents.* The Iowa income of a nonresident must include compensation for personal services rendered within the state of Iowa. The salary or other compensation of an employee or corporate officer who performs services related to businesses located in Iowa, or has an office in Iowa, are not subject to Iowa tax, if the services are performed while the taxpayer is outside of Iowa. However, the salary earned while the nonresident employee or officer is located within the state of Iowa would be subject to Iowa taxation. The Iowa taxable income of the nonresident shall include that portion of the total compensation received from the employer for personal services for the tax year which the total number of working days that the individual was employed within the state of Iowa bears to the total number of working days within and without the state of Iowa.

Compensation paid by an Iowa employer for services performed wholly outside of Iowa by a nonresident is not taxable income to the state of Iowa. However, all services performed within Iowa, either part-time or full-time, would be taxable to the nonresident and must be reported to this state.

Compensation received from the United States Government by a nonresident member of the armed forces is explained in 40.5(422).

Income from commissions earned by a nonresident traveling salesperson, agent or other employee for services performed or sales made and whose compensation depends directly on the volume of business transacted by the nonresident will include that proportion of the compensation received which the volume of business transacted by the employee within the state of Iowa bears to the total volume of business transacted by the employee within and without the state. Allowable deductions will be apportioned on the same basis. However, where separate accounting records are maintained by a nonresident or the employer of the business transacted in Iowa, then the amount of Iowa compensation can be reported based upon separate accounting.

Nonresident actors, singers, performers, entertainers, wrestlers, boxers (and similar performers), must include as Iowa income the gross amount received for performances within this state.

Nonresident attorneys, physicians, engineers, architects (and other similar professions), even though not regularly employed in this state, must include as Iowa income the entire amount of fees or compensation received for services performed in this state.

If nonresidents are employed in this state at intervals throughout the year, as would be the case if employed in operating trains, planes, motor buses, or trucks and similar modes of transportation, between this state and other states and foreign countries, and who are paid on a daily, weekly or monthly basis, the gross income from sources within this state is that portion of the total compensation for personal services which the total number of working days employed within the state bears to the total number of working days both within and without the state. If paid on a mileage basis, the gross income from sources within this state is that portion of the total compensation for services which the number of miles traveled in Iowa bears to the total number of miles traveled both within and without the state. If paid on some other basis, the total compensation for personal services must be apportioned between this state and other states and foreign countries in such a manner as to allocate to Iowa that portion of the total compensation which is reasonably attributable to personal services performed in this state. Any alternative method of allocation is subject to review and change by the director. However, pursuant to the Amtrak Reauthorization and Improvement Act of 1990, nonresidents who earn compensation in Iowa and one or more other states for a railway company or for a motor carrier are only subject to the income tax laws of their state of residence, and the compensation would not be considered gross income from sources within Iowa.

40.16(3) *Income from business sources within and without the state.* When income is derived from any business, trade, profession, or occupation carried on partly within and partly without the state only

such income as is fairly and equitably attributable to that portion of the business, trade, profession, or occupation carried on in this state, or to services rendered within the state shall be included in the gross income of a nonresident taxpayer. In any event, the entire amount of such income both within and without the state is to be shown on the nonresident's return.

40.16(4) *Apportionment of business income from business carried on both within and without the state.*

a. If a nonresident, or a partnership or trust with a nonresident member, transacts business both within and without the state, the net income must be so apportioned as to allocate to Iowa a portion of the income on a fair and equitable basis, in accordance with approved methods of accounting.

b. The amount of net income attributable to the manufacture or sale of tangible personal property shall be that portion which the gross sales made within the state bears to the total gross sales. The gross sales of tangible personal property are in the state if the property is delivered or shipped to a purchaser within this state, regardless of the F.O.B. point or other conditions of the sale.

c. Income derived from business other than the manufacture or sale of tangible personal property shall be attributed to Iowa in that portion which the Iowa gross receipts bear to the total gross receipts. Gross receipts are attributable to this state in the portion which the recipient of the service receives benefit of the service in this state.

d. If the taxpayer believes that the gross sales or gross receipts methods subjects the taxpayer to taxation on a greater portion of net income than is reasonably attributable to the business within this state the taxpayer may request the use of separate accounting or another alternative method which the taxpayer believes to be proper under the circumstances. In any event, the entire income received by the taxpayer and the basis for a special method of allocation shall be disclosed in the taxpayer's return.

40.16(5) *Income from intangible personal property.* Business income of nonresidents from rentals or royalties for the use of, or the privilege of using in this state, patents, copyrights, secret processes and formulas, goodwill, trademarks, franchises, and other like property is income from sources within the state.

Income of nonresidents from intangible personal property such as shares of stock in corporations, bonds, notes, bank deposits and other indebtedness is not taxable as income from sources within this state except where such income is derived from a business, trade, profession, or occupation carried on within this state by the nonresident. If a nonresident buys or sells stocks, bonds, or other such property, so regularly, systematically and continuously as to constitute doing business in this state, the profit or gain derived from such activity is taxable as income from a business carried on within Iowa.

Following are examples to illustrate when intangible income may or may not be subject to the allocation provisions of Iowa Code section 422.8 and rules 701—40.15(422) and 701—42.3(422):

EXAMPLE A - An Illinois resident is a laborer at a factory in Davenport. A $50 payroll deduction is made each week from the laborer's paycheck to the company's credit union. The Illinois resident will earn $600 in interest income from the Iowa credit union account in 1983. The interest income would not be included in the net income allocated to Iowa since the interest income is not derived from the taxpayer's business or utilized for business purposes.

EXAMPLE B - A Nebraska resident is a self-employed plumber, who has a plumbing business in Council Bluffs. The plumber has an interest-bearing checking account in an Iowa bank which the plumber uses to pay bills for the plumbing business. The plumber will earn $200 in interest income from the checking account in 1982. The plumber will have a net income of $25,000 from the plumbing business which will be reported on the plumber's 1982 Iowa return. The interest income earned by this nonresident would be taxable to Iowa since it is derived from the business and is utilized in the business.

EXAMPLE C - An Illinois resident has a farm in Illinois. The Illinois resident has an account in an Iowa savings and loan association and invests earnings from the Illinois farm in the Iowa savings and loan account. In 1982, the Illinois farmer will earn $1,000 in interest income from the account in the Iowa savings and loan. The interest income is not included in the net income allocable to Iowa since the interest income is not derived from the taxpayer's trade or business.

EXAMPLE D - An Illinois resident has Iowa farms. The Illinois resident invests the profits from the farms in a savings account in an Iowa bank. Several times a year, the taxpayer transfers part of the funds

from the savings account to the taxpayer's checking account to purchase machinery to be used in the farming operations. The interest income would not be included in income allocated to Iowa since the interest income is not derived from the taxpayer's trade or business nor is the savings account utilized as a business account.

EXAMPLE E - An Illinois resident is a physician, whose practice is in Iowa. The physician has a business checking account in an Iowa bank that is used to pay the bills relating to the physician's practice. In the same bank, the physician has a personal savings account where all the physician's receipts for a given month are deposited. On the first working day of the month, funds are transferred from the savings account to the checking account to pay the bills that have accrued during the month. The interest income from the savings account would be included in net income allocated to Iowa since it is derived from and utilized in the business.

EXAMPLE F - A nonresident has a farm in Iowa which is the nonresident's principal business, although this person is an Illinois resident. The nonresident has an interest-bearing checking account in an Iowa bank. This checking account is used to pay personal expenditures as well as to pay expenses incurred in operation of the farm. In 1982, the taxpayer will earn $550 in interest from the checking account. The interest would be included in net income allocated to Iowa since the interest is derived from the business, generated from a business account, and utilized in the business.

Income of a nonresident beneficiary from an estate or trust, distributed or distributable to the beneficiary out of income from intangible personal property of the estate or trust, is not income from sources in this state and is not taxable to the nonresident beneficiary unless the property is so used by the estate or trust as to create a business, trade, profession, or occupation in this state.

Whether or not the executor or administrator of an estate or the trustee of a trust is a resident of this state is immaterial, insofar as the taxation of income of beneficiaries from the estate or trust are concerned.

40.16(6) *Distributive shares of nonresident partners.* When a partnership derives income from sources within this state as determined in 40.16(3) to 40.16(5), the nonresident members of the partnership are taxable only upon that portion of their distributive share of the partnership income which is derived from sources within this state.

40.16(7) *Interest and dividends from government securities.* Interest and dividends from federal securities subject to the federal income tax under the Internal Revenue Code are not to be included in determining the Iowa net income of a nonresident, but any interest and dividends from securities and from securities of state and other political subdivisions exempt for federal income tax under the Internal Revenue Code are to be included in the Iowa net income of a nonresident to the extent that same are derived from a business, trade, profession, or occupation carried on within the state of Iowa by the nonresident.

40.16(8) *Gains or losses from sales or exchanges of real property and tangible personal property by a nonresident of Iowa.* If a nonresident realizes any gains or losses from sales or exchanges of real property or tangible personal property within the state of Iowa, such gains or losses are subject to the Iowa income tax and shall be reported to this state by the nonresident. Gains or losses attributable to Iowa will be determined as follows:

1. Gains or losses from sales or exchanges of real property located in this state are allocable to this state.

2. Capital gains and losses from sales or exchanges of tangible personal property are allocable to this state if the property had a situs in this state at the time of the sale.

In determining whether a short-term or long-term capital gain or a capital loss is involved in a sale or exchange, and determining the amount of a gain from the sale of real or tangible property in Iowa, the provisions of the Internal Revenue Code are to be followed.

40.16(9) *Capital gains or losses from sales or exchanges of ownership interests in Iowa business entities by nonresidents of Iowa.* Nonresidents of Iowa who sell or exchange ownership interests in various Iowa business entities will be subject to Iowa income tax on capital gains and capital losses from those transactions for different entities as described in the following paragraphs:

a. Capital gains from sales or exchanges of stock in C corporations and S corporations. When a nonresident of Iowa sells or exchanges stock in a C corporation or an S corporation, that shareholder is selling or exchanging the stock, which is intangible personal property. The capital gain received by a nonresident of Iowa from the sale or exchange of capital stock of a C corporation or an S corporation is taxable to the state of the personal domicile or residence of the owner of the capital stock unless the stock attains an independent business situs apart from the personal domicile of the individual who sold the capital stock. The stock may acquire an independent business situs in Iowa if the stock had been used as an integral part of some business activity occurring in Iowa in the year in which the sale or exchange of the stock had taken place. Whether the stock has attained an independent business status is determined on a factual basis.

For example, a situation in which capital stock owned by a nonresident of Iowa was used as collateral to secure a loan to remodel a retail store in Iowa, regardless of the ownership of the store, would meet the test for the stock being used as an integral part of some business activity in Iowa.

Assuming that the gain from the sale or exchange of stock is attributable to Iowa, the next step is to determine how much of the gain is attributable to Iowa. This is computed on the basis of the Iowa allocation and apportionment rules applicable to the separate business the stock has become an integral part of for the year in which the sale or exchange occurred. For example, if the business was subject to Iowa income tax on 40 percent of its income in the year of the sale or exchange, then 40 percent of the capital gain would be attributable or taxable by Iowa.

However, the fact that the gain from the sale or exchange of stock is taxable or partially taxable to Iowa does not mean that the dividends received by the nonresident in the year of sale are taxable to Iowa. Dividends from stock used in an Iowa specific business activity would not be taxable to Iowa except under special circumstances. An illustration of these special circumstances would be when the dividends are from capital stock from a business where the purchase and sale of stock constitute a regular business in Iowa. In this situation the dividends would be taxable to Iowa. See subrule 40.16(5).

b. Capital gains from sales or exchanges of interests in partnerships. When a nonresident of Iowa sells or exchanges the individual's interest in a partnership, the nonresident is actually selling an intangible since the partnership can continue without the nonresident partner and the assets used by the partnership are legally owned by the partnership and an individual retains only an equitable interest in the assets of the partnership by virtue of the partner's ownership interest in the partnership. However, because of the unique attributes of partnerships, the owner's interest in a partnership is considered to be localized or "sourced" at the situs of the partnership's activities as a matter of law. *Arizona Tractor Co. v. Arizona State Tax Com'n.,* 566 P.2d 1348, 1350 (Ariz. App. 1997); Iowa Code chapter 486 (unique attributes of a partnership defined). Therefore, if a partnership conducts all of its business in Iowa, 100 percent of the gain on the sale or exchange of a partnership interest would be attributable to Iowa. On the other hand, if the partnership conducts 100 percent of its business outside of Iowa, none of the gain would be attributable to Iowa for purposes of the Iowa income tax. In the situation where a partnership conducts business both in and out of Iowa, the capital gain from the sale or exchange of an interest in the partnership would be allocated or apportioned in and out of Iowa based upon the partnership's activities in and out of Iowa in the year of the sale or exchange.

Note that if a partnership is a publicly traded partnership and is taxed as a corporation for federal income tax purposes, any capital gains realized on the sale or exchange of a nonresident partner's interest in the partnership will receive the same tax treatment as the capital gain from the sale or exchange of an interest in a C corporation or an S corporation as specified in paragraph *"a"* of this subrule.

c. Capital gains from sales or exchanges of sole proprietorships. When a nonresident sells or exchanges the individual's interest in a sole proprietorship, the nonresident is actually selling or exchanging tangible and intangible personal property used in this business because the sole proprietor is the legal and equitable owner of all such assets. Therefore, the general source or situs rules governing the gain from the sale or exchange of tangible property and intangible property by a nonresident individual control. Thus, if the sole proprietorship is located in Iowa, the gain from the sale or exchange of the proprietorship by a nonresident would be taxable to Iowa.

d. Capital gains from sales or exchanges of interests in limited liability companies. Limited liability companies are hybrid business entities containing elements of both a partnership and a corporation. If a limited liability company properly elected to file or would have been required to file a federal partnership tax return, a capital gain from the sale or exchange of an ownership interest in the limited liability company by a nonresident member of the company would be taxable to Iowa to the same extent as if the individual were selling a similar interest in a partnership as described in paragraph *"b"* of this subrule. However, if the limited liability company properly elected or would have been required to file a federal corporation tax return, a nonresident member who sells or exchanges an ownership interest in the limited liability company would be treated the same as if the nonresident were selling a similar interest in a C corporation or an S corporation as described in paragraph *"a"* of this subrule.

e. Taxation of corporate liquidations. As a matter of Iowa law, the proceeds from corporate liquidating distributions are not considered to be the proceeds from the sale or exchange of corporate stock. Rather, such proceeds represent the transfer back to the shareholder of that shareholder's pro-rata share of the actual assets of the corporation in which each shareholder held only an equitable ownership interest prior to the dissolution. *Lynch v. State Board of Assessment and Review,* 228 Iowa 1000, 1003-1004, 291 N.W. 161 (1940). The amount of such gain is calculated by subtracting the distribution realized from the shareholder's basis in the stock. Id. Thus, any gain realized by the shareholder upon such distribution is considered a capital gain from a sale or exchange of the assets by the shareholder for purposes of sourcing the shareholder's liquidating distribution gain. Consequently, the gain, whether it is from a distribution of cash or other property, is controlled by the general source or situs rules in subrule 40.16(8) governing the taxation of the sale or exchange of tangible personal property by a nonresident and subrule 40.16(10) governing the sale or exchange of intangible personal property by a nonresident.

f. Capital losses realized by a nonresident of Iowa from the sale or exchange of an ownership interest in an Iowa business entity. In a situation where a nonresident of Iowa sells the ownership interest in an Iowa business entity and has a capital loss from the transaction, the nonresident can claim the loss on the Iowa income tax return under the same circumstances that a capital gain would have been reported as described in paragraphs *"a"* through *"e"* of this subrule. The federal income tax provisions for netting Iowa source capital gains and losses are applicable as well as the federal provisions for limiting the net capital loss in the tax year to $3,000, with the carryover of the portion of net capital losses that exceed $3,000.

40.16(10) *Capital gains and losses from sales or exchanges of intangible personal property other than ownership interests in business entities.* Capital gains and losses realized by a nonresident of Iowa from the sale or exchange of intangible personal property (other than interests in business entities) are taxable to Iowa if the intangible property was an integral part of some business activity occurring regularly in Iowa prior to the sale or exchange. In the case of an intangible asset which was an integral part of a business activity of a business entity occurring regularly within and without Iowa, a capital gain or loss from the sale or exchange of the intangible asset by a nonresident of Iowa would be reported to Iowa in the ratio of the Iowa business activity to the total business activity for the year of the sale.

This rule is intended to implement Iowa Code sections 422.5, 422.7, and 422.8.

701—40.17(422) Income of part-year residents. A taxpayer who was a resident of Iowa for only a portion of the taxable year is subject to the following rules of taxation:

1. For that portion of the taxable year for which the taxpayer was a nonresident, the taxpayer shall allocate to Iowa only the income derived from sources within Iowa.

2. For that portion of the taxable year for which the taxpayer was an Iowa resident, the taxpayer shall allocate to Iowa all income earned or received whether from sources within or without Iowa.

A taxpayer moving into Iowa may adjust the Iowa-source gross income on Schedule IA 126 by the amount of the moving expense to the extent allowed by Section 217 of the Internal Revenue Code. Any reimbursement of moving expense shall be included in Iowa-source gross income. A taxpayer moving

from Iowa to another state or country may not adjust the Iowa-source gross income by the amount of moving expense, nor should any reimbursement of moving expense be allocated to Iowa.

This rule is intended to implement Iowa Code sections 422.5, 422.7, and 422.8.

701—40.18(422) Net operating loss carrybacks and carryovers. Net operating losses shall be allowed or allowable for Iowa individual income tax purposes and will be computed using a method similar to the method used to compute losses allowed or allowable for federal income tax purposes. In determining the applicable amount of Iowa loss carrybacks and carryovers, the adjustments to net income set forth in Iowa Code section 422.7 and the deductions from net income set forth in Iowa Code section 422.9 must be considered.

40.18(1) *Treatment of federal income taxes.*

a. Refund of federal income taxes due to net operating loss carrybacks or carryovers shall be reflected in the following manner:

(1) Accrual basis taxpayers shall accrue refunds of federal income taxes to the year in which the net operating loss occurs.

(2) Cash basis taxpayers shall reflect refunds of federal income taxes in the return for the year in which the refunds are received.

(3) Refunds reported in the year in which the net operating loss occurs which contain both business and nonbusiness components shall be analyzed and separated accordingly. The amount of refund attributable to business income shall be that amount of federal taxes paid on business income which are being refunded.

b. Federal income taxes paid in the year of the loss which contain both business and nonbusiness components shall be analyzed and separated accordingly. Federal income taxes paid in the year of the loss shall be reflected as a deduction to business income to the extent that the federal income tax was the result of the taxpayer's trade or business. Federal income taxes paid which are not attributable to a taxpayer's trade or business shall also be allowed as a deduction but will be limited to the amount of gross income which is not derived from a trade or business.

40.18(2) *Nonresidents doing business within and without Iowa.* If a nonresident does business both within and without Iowa, the nonresident shall make adjustments reflecting the apportionment of the operating loss on the basis of business done within and without the state of Iowa, according to rule 40.16(422). The apportioned income or loss shall be added or deducted, as the case may be, to any amount of other income attributable to Iowa for that year.

40.18(3) *Loss carryback and carryforward.* The net operating loss attributable to Iowa as determined in rule 40.18(422) shall be subject to the federal 2-year carryback and 20-year carryover provisions if the net operating loss was for a tax year beginning after August 5, 1997, or subject to the federal 3-year carryback and the 15-year carryforward provisions if the net operating loss was for a tax year beginning prior to August 6, 1997. However, in the case of a casualty or theft loss for an individual taxpayer or for a net operating loss in a presidentially declared disaster area incurred by a taxpayer engaged in a small business or in the trade or business of farming, the net operating loss is to be carried back 3 taxable years and forward 20 taxable years if the loss is for a tax year beginning after August 5, 1997. The net operating loss or casualty or theft loss shall be carried back or over to the applicable year as a reduction or part of a reduction of the taxable income attributable to Iowa for that year. However, a net operating loss shall not be carried back to a year in which the taxpayer was not doing business in Iowa. If the election under Section 172(b)(3) of the Internal Revenue Code is made, the Iowa net operating loss shall be carried forward 20 taxable years if the net operating loss is for a tax year beginning after August 5, 1997, or the net operating loss shall be carried forward 15 taxable years if the loss is for a tax year beginning before August 6, 1997. A copy of the federal election made under Section 172(b)(3) of the Internal Revenue Code must be attached to the Iowa individual return filed with the department.

40.18(4) *Loss not applicable.* No part of a net loss for a year for which an individual was not subject to the imposition of Iowa individual income tax shall be included in the Iowa net operating loss deduction applicable to any year prior to or subsequent to the year of the loss.

40.18(5) *Special adjustments applicable to net operating losses.* Section 172(d) of the Internal Revenue Code provides for certain modifications when computing a net operating loss. These modifications refer to, but are not limited to, such things as considerations of other net operating loss deductions, treatment of capital gains and losses, and the limitation of nonbusiness deductions. Where applicable, the modifications set forth in Section 172 of the Internal Revenue Code shall be considered when computing the net operating loss carryover or carryback for Iowa income tax purposes.

40.18(6) *Distinguishing business or nonbusiness items.* In computing a net operating loss, nonbusiness deductions may be claimed only to the extent of nonbusiness income. Therefore, it is necessary to distinguish between business and nonbusiness income and expenses. For Iowa net operating loss purposes, an item will retain the same business or nonbusiness identity which would be applicable for federal income tax purposes.

40.18(7) *Examples.* The computation of a net operating loss deduction for Iowa income tax purposes is illustrated in the following examples:

a. Individual A had the following items of income for the taxable year:

Gross income from retail sales business		$125,000
Interest income from federal securities		2,000
Salary from part-time job		12,500
Individual A's federal return showed the following deductions:		
Business deductions (retail sales)		$150,000
Itemized (nonbusiness) deductions:		
Interest	$400	
Real estate tax	600	
Iowa income tax	800	$ 1,800

Individual A paid $3,000 federal income tax during the year which consisted of $2,500 federal withholding (business) and a $500 payment (nonbusiness) which was for the balance of the prior year's federal tax liability.

The federal computations are as follows:

	Per Return	Computed NOL
Income:		
Retail Sales	$125,000	$125,000
Interest income-federal securities	2,000	2,000
Salary	12,500	12,500
Subtotal	$139,500	$139,500
Deductions:		
Business	$150,000	$150,000
Itemized deductions	1,800	1,800
(Loss) per federal	($ 12,300)	
Computed net operating loss		($ 12,300)

Since the nonbusiness deductions do not exceed the nonbusiness income, the loss per the federal return and the computed net operating loss are the same.

The Iowa computations are as follows:

	Per Return	Computed NOL
Income:		
Retail sales	$125,000	$125,000
Salary	12,500	12,500
Subtotal	$137,500	$137,500
Deductions:		
Business	$150,000	$150,000
Federal tax deductions	3,000	2,500
Itemized deductions	1,000	-
(Loss) per return	($ 16,500)	
Computed Iowa NOL		($ 15,000)

NOTE: Itemized (nonbusiness deductions) are eliminated due to the lack of nonbusiness income. The only nonbusiness income, interest from federal securities, is not taxable for Iowa income tax purposes under Iowa Code section 422.7. The only federal tax deduction allowable is that related to business activity.

b. Individual B had the following items of income for the taxable year:

Gross income from restaurant business		$300,000
Wages		12,000
Business long-term capital gain @100%		1,000
Municipal bond interest (nonbusiness)		1,000
Federal tax refund of prior year taxes		500
Iowa tax refund of prior year taxes		100
Individual B's federal return showed the following deductions:		
Business deductions from restaurant		$333,000
Itemized deductions:		
Interest (nonbusiness)	$590	
Real estate tax (nonbusiness)	780	
Iowa income tax*	520	
Alimony (nonbusiness)	600	
Union dues (business)	100	2,590

*Iowa estimated payments totaled $220 of which $70 related to nonbusiness income and $150 related to business capital gains and business profits. $300 in Iowa tax was withheld from his wages.

Individual B paid $2,000 in federal income taxes during the tax year. $1,500 of this amount was withholding on wages and $500 was a federal estimated payment based on capital gains and projected business profits.

In the previous year 75 percent of B's income was from business sources and 25 percent was from nonbusiness sources.

The federal computations are as follows:

	Per Return	Computed NOL
Income:		
Retail sales	$300,000	$300,000
Wages	12,000	12,000
Capital gains	500(a)	1,000(a)
Iowa refund	100	100
Subtotal	$312,600	$313,100
Deductions:		
Business	$333,000	$333,000
Itemized deductions	2,590	575(b)
(Loss) per federal	($ 22,990)	
Computed net operating loss		($ 20,475)

(a) Capital gains are reduced by 50 percent in computing adjusted gross income, but must be reported in full in computing a net operating loss.

(b) Itemized deductions are limited to business deductions consisting of $100 for union dues, $450 for Iowa tax on business income, and nonbusiness deductions to the extent of nonbusiness income which amounts to $25. The only nonbusiness income is 25 percent of the $100 Iowa refund.

The Iowa computations are as follows:

	Per Return	Computed NOL
Income:		
Retail sales	$300,000	$300,000
Wages	12,000	12,000
Capital gains	500	1,000
Municipal bond interest	1,000	1,000
Federal refund	500	500
Subtotal	$314,000	$314,500
Deductions:		
Business	$333,000	$333,000
Federal tax	2,000	2,000
Itemized deductions	2,070(c)	1,225(d)
(Loss) per return	($ 23,070)	
Computed Iowa NOL		($ 21,725)

(c) Iowa income tax is not an itemized deduction for Iowa income tax purposes.

(d) Itemized deductions are limited to business deductions of $100 for union dues and nonbusiness deductions to the extent of nonbusiness income of $1,125. Nonbusiness income includes $1,000 of municipal bond interest and 25 percent ($125) of the federal tax refund.

40.18(8) *Net operating losses for nonresidents and part-year residents for tax years beginning on or after January 1, 1982.* For tax years beginning on or after January 1, 1982, nonresidents and part-year residents may carryback/carryforward only those net operating losses from Iowa sources. Nonresidents and part-year residents may not carryback/carryforward net operating losses which are from all sources.

Before the Iowa net operating loss of a nonresident or part-year resident is available for carryback/carryforward to another tax year, the loss must be decreased or increased by a number of possible adjustments depending on which adjustments are applicable to the taxpayer for the year of the loss. Iowa Net Operating Loss (NOL) Worksheet (41-123) may be used to make the adjustments to the net operating loss and compute the net operating loss deduction available for carryback/carryforward.

If the net operating loss was increased by an adjustment for an individual retirement account or H.R.10 retirement plan, the net operating loss should be decreased by the amount of the adjustment. The net operating loss should also be decreased by the amount of any capital loss or by the capital gain deduction to the extent the capital loss or capital gain deduction was from the sale or exchange of an asset from an Iowa source.

In a situation where the nonresident or part-year resident taxpayer received a federal income tax refund in the year of the NOL, the refund should reduce the loss in the ratio of the Iowa source income to the all source income for the tax year in which the refund was generated.

The net operating loss should be increased by any federal income tax paid in the loss year for a prior year in the ratio of the Iowa income for the prior year to the all source income for the prior year. Federal income tax withheld from wages or other compensation received in the loss year may be used to increase the Iowa net operating loss to the extent the tax is withheld from wages or other compensation earned in Iowa.

Federal estimate tax payments would be allocated to Iowa and increase the net operating loss on the basis of the Iowa income not subject to withholding to total income not subject to withholding. In any case where this method of allocation of federal estimate payments to Iowa is not considered to be equitable, the taxpayer may allocate the payments using another method as long as this method is disclosed on the taxpayer's Iowa individual income tax return for the year of the loss. However, the burden of proof is on the taxpayer to show that an alternate method of allocation is equitable.

Nonbusiness deductions included in the itemized deductions paid during the year of the net operating loss may be used to increase the NOL to the extent of nonbusiness income which is reported to Iowa in computation of the net operating loss. In most instances of net operating losses for nonresidents, no itemized deductions will be allowed in computing the net operating loss deduction. This is because most nonresidents will have no nonbusiness income reported to Iowa. Business deductions included in the federal itemized deductions may be used to increase the net operating loss deduction to the extent the deductions pertain to a business, trade, occupation or profession conducted in Iowa.

EXAMPLE A. A nonresident taxpayer had the following all source income and Iowa source income for 1982:

Category	All Source Income	Iowa Source Income
Wages	$20,000	$20,000
Interest	5,000	0
Rental income	5,000	5,000
Business loss	(50,000)	(10,000)
Iowa net income (loss)	($20,000)	$15,000

The nonresident taxpayer did not have an Iowa net operating loss available for carryback/carryforward for Iowa income tax purposes because the taxpayer's Iowa source income was not negative. The taxpayer's all source loss of ($20,000) does not qualify for carryback/carryforward on the Iowa return. However, since the taxpayer's all source income is negative, the taxpayer will not have an Iowa income tax liability for the year of the all source loss.

EXAMPLE B. A nonresident taxpayer received a federal refund of $1,000 in 1983. The refund was from the taxpayer's 1981 federal return where the taxpayer's Iowa income was 20% of the total income. $2,000 of federal income tax was withheld from the taxpayer's Iowa wages in 1982. The taxpayer had $10,000 in itemized deductions in 1982. However, the taxpayer had no Iowa nonbusiness income in

1982. In addition, no Iowa business deductions were included in the itemized deductions available on the federal return. The individual had the following all source income and Iowa source income in 1982:

Category	All Source Income	Iowa Source Income
Wages	$60,000	$10,000
Interest	3,000	0
Rental income	5,000	5,000
Farm income loss	(30,000)	(30,000)
Capital gain	2,000	2,000
Total incomes	$40,000	($13,000)

The taxpayer's Iowa source loss of ($13,000) was decreased by $200 of the federal refund since 20% of the refund was considered to be from Iowa income. The loss was decreased by $3,000 which was the capital gain deduction of the Iowa source asset sold in 1982. The loss was increased by the federal income tax withheld of $2,000 from Iowa wages. Because there is no Iowa source nonbusiness income nor Iowa source business deductions, the taxpayer's itemized deductions will not affect the net operating loss deduction.

Shown below is a recap of the net operating loss deduction for the nonresident taxpayer.

Iowa source net loss	($13,000)
Iowa portion of federal refund	200
Federal tax withheld on Iowa wages	(2,000)
Capital gain deduction	3,000
Total	($11,800)

The taxpayer's net operating loss deduction available for carryback/carryforward to another tax year is ($11,800).

After all adjustments are made to the Iowa net operating loss to compute the net operating loss deduction available for carryback/carryforward, the NOL deduction is applied to the carryback/carryforward tax year as described in paragraph *"a"* and paragraph *"b"* below:

a. Application of net operating losses to tax years beginning prior to January 1, 1982. In cases where a net operating loss deduction for a nonresident or part-year resident for a tax year beginning on or after January 1, 1982, is applied to a tax year beginning prior to January 1, 1982, the net operating loss deduction is applied to the taxable income for the carryback/carryforward year unless the NOL deduction is greater than the taxable income. If the NOL deduction is greater than the taxable income, the taxable income is increased by any Iowa source capital loss or any Iowa source capital gain deduction before the NOL deduction is applied against the taxable income.

EXAMPLE 1. A nonresident taxpayer has an Iowa net operating loss deduction of ($15,000) from the taxpayer's 1982 Iowa return. The taxpayer is carrying the NOL deduction back to 1979 where taxpayer's Iowa taxable income was $14,000. The taxpayer had a net capital loss of $3,000 in 1979. Because the taxpayer's 1979 taxable income of $14,000 was $1,000 less than the NOL deduction, the taxable income was increased by $1,000 of the net capital loss so there would be no carryover of the NOL to 1980. However, since the NOL deduction erased all the taxable income for 1979, the taxpayer would be granted a refund of all the Iowa income tax paid for the carryback year of 1979, plus applicable interest.

b. Application of net operating losses to tax years beginning on or after January 1, 1982. In situations where a net operating loss of a nonresident or part-year resident for a tax year beginning on or after January 1, 1982, is carried back/carried forward for application to a tax year beginning on or after January 1, 1982, the net operating loss deduction is applied to the Iowa source income of the taxpayer for the carryback/carryforward year. The Iowa source income is the income on line 25 of Section B of Schedule IA-126 for the 1982 and 1983 Iowa returns and line 26 of Section B of Schedule IA-126 for

the 1984 Iowa return and the incomes on similar corresponding lines of Section B of Schedule IA-126 for tax years after 1984. In situations where the net operating loss deductions are larger than the Iowa source incomes, the Iowa source incomes are increased by any Iowa source capital gains or capital losses that are applicable, not to exceed the NOL deduction.

The Iowa source net income after reduction by the NOL deduction is divided by the all source income for the taxpayer. The resulting percentage is the adjusted Iowa income percentage. This percentage is subtracted from 100 percent to arrive at the revised nonresident/part-year resident credit for the taxpayer. The taxpayer's overpayment as a result of the net operating loss is the amount by which the revised nonresident/part-year credit exceeds the nonresident/part-year credit prior to application of the net operating loss deduction.

EXAMPLE 1. A nonresident taxpayer had a net operating loss deduction of $11,800 for the 1996 tax year. When the 1996 Iowa return was filed, the taxpayer elected to carry the loss forward to the 1997 tax year. The taxpayer's all source net income and Iowa source net income for 1997 were as shown below. The net operating loss carryforward from 1996 is deducted only from the Iowa source income for 1997:

Category	All Source Income	Iowa Source Income
Wages	$ 60,000	$ 20,000
Interest	3,000	0
Rental income	10,000	3,000
Farm income	25,000	25,000
Capital gain	2,000	2,000
Net operating loss carryforward	—	(11,800)
Iowa net income	$100,000	$ 38,200

The Iowa source income of $38,200 after reduction by the NOL carryforward is divided by the all source income of $100,000 which results in an Iowa income percentage of 38.2. This percentage is subtracted from 100 percent to arrive at the nonresident/part-year resident credit percentage of 61.8. When the tax after credit amount of $7,364 is multiplied by the nonresident/part-year credit percentage of 61.8, this results in a credit of $4,551. This credit is $869 greater than the nonresident/part-year credit of $3,682 would have been for 1997 without application of the net operating loss deduction which was carried forward from 1996.

40.18(9) *Net operating loss carryback for a taxpayer engaged in the business of farming.* Notwithstanding the net operating loss carryback periods described in subrule 40.18(3), a taxpayer who is engaged in the trade or business of farming as defined in Section 263A(e)(4) of the Internal Revenue Code and has a loss from farming as defined in Section 172(b)(1)(F) of the Internal Revenue Code for a tax year beginning on or after January 1, 1998, this loss from farming is a net operating loss which the taxpayer may carry back five taxable years prior to the year of the loss. Therefore, if a taxpayer has a net operating loss from the trade or business of farming for the 1998 tax year, the net operating loss from farming can be carried back to the taxpayer's 1993 Iowa return and can be applied to the income shown on that return. The farming loss is the lesser of (1) the amount that would be the net operating loss for the tax year if only income and deductions from the farming business were taken into account, or (2) the amount of the taxpayer's net operating loss for the tax year. Thus, if a taxpayer has a $10,000 loss from a grain farming business and the taxpayer had wages in the tax year of $7,000, the taxpayer's loss for the year is only $3,000. Therefore, the taxpayer has a net operating loss from farming of $3,000 that may be carried back five years.

However, if a taxpayer has a net operating loss from the trade or business of farming for a taxable year beginning in 1998 or for a taxable year after 1998 and makes a valid election for federal income tax purposes to carry back the net operating loss two years, or three years if the loss was in a presidentially declared disaster area or related to a casualty or theft loss, the net operating loss must be carried back two

years or three years for Iowa income tax purposes. A copy of the federal election made under Section 172(i)(3) for the two-year or three-year carryback in lieu of the five-year carryback may be attached to the Iowa return or the amended Iowa return to show why the carryback was two years or three years instead of five years.

This rule is intended to implement Iowa Code sections 422.5 and 422.7 and Iowa Code Supplement section 422.9(3).

701—40.19(422) Casualty losses. Casualty losses may be treated in the same manner as net operating losses and may be carried back three years and forward seven years in the event said casualty losses exceed income in the loss year.

This rule is intended to implement Iowa Code section 422.7.

701—40.20(422) Adjustments to prior years. When Iowa requests for refunds are filed, they shall be allowed only if filed within three years after the tax payment upon which a refund or credit became due, or one year after the tax payment was made, whichever time is the later. Even though a refund may be barred by the statute of limitations, a loss shall be carried back and applied against income on a previous year to determine the correct amount of loss carryforward.

This rule is intended to implement Iowa Code section 422.73.

701—40.21(422) Additional deduction for wages paid or accrued for work done in Iowa by certain individuals. For tax years beginning on or after January 1, 1984, but before January 1, 1989, a taxpayer who operates a business which is considered to be a small business as defined in subrule 40.21(2) is allowed an additional deduction for 50 percent of the first 12 months of wages paid or accrued during the tax years for work done in Iowa by employees first hired on or after January 1, 1984, or after July 1, 1984, where the taxpayer first qualifies as a small business under the expanded definition of a small business effective July 1, 1984, and meets one of the following criteria.

A handicapped individual domiciled in this state at the time of hiring.

An individual domiciled in this state at the time of hiring who meets any of the following conditions:

1. Has been convicted of a felony in this or any other state or the District of Columbia.
2. Is on parole pursuant to Iowa Code chapter 906.
3. Is on probation pursuant to Iowa Code chapter 907 for an offense other than a simple misdemeanor.
4. Is in a work release program pursuant to Iowa Code chapter 247A.

An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under Iowa Code section 913.40 applies.

For tax years beginning on or after January 1, 1989, the additional deduction for wages paid or accrued for work done in Iowa by certain individuals is 65 percent of the wages paid for the first 12 months of employment of the individuals, not to exceed $20,000 per individual. Individuals must meet the same criteria to qualify their employers for this deduction for tax years beginning on or after January 1, 1989, as for tax years beginning before January 1, 1989.

For tax years ending after July 1, 1990, a taxpayer who operates a business which does not qualify as a small business specified in subrule 40.21(2) may claim an additional deduction for wages paid or accrued for work done in Iowa by certain convicted felons provided the felons are described in the four numbered paragraphs above and the following unnumbered paragraph and provided the felons are first hired on or after July 1, 1990. The additional deduction is 65 percent not to exceed $20,000 for the first 12 months of wages paid for work done in Iowa.

The qualifications mentioned in subrules 40.21(1), 40.21(4), 40.21(5) and 40.21(6) and in subrule 40.21(3), paragraphs *"f"* and *"g,"* apply to the additional deduction for work done in Iowa by a convicted felon in situations where the taxpayer is not a small business as well as in situations where the taxpayer is a small business.

The additional deduction applies to any individual hired on or after July 1, 2001, whether or not domiciled in Iowa at the time of hiring, who is on parole or probation and to whom either the interstate probation and parole compact under Iowa Code section 907A.1 or the compact for adult offenders under Iowa Code chapter 907B applies. The amount of additional deduction for hiring this individual is equal to 65 percent of the wages paid, but the additional deduction is not to exceed $20,000 for the first 12 months of wages paid for work done in Iowa.

40.21(1) The additional deduction shall not be allowed for wages paid to an individual who was hired to replace an individual whose employment was terminated within the 12-month period preceding the date of first employment. However, if the individual being replaced left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct in connection with the individual's employment as determined by the department of workforce development, the additional deduction shall be allowed.

The determination of whether an individual left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct is a factual determination which must be made on a case-by-case basis.

40.21(2) The term "small business" means a business entity organized for profit including but not limited to an individual proprietorship, partnership, joint venture, association or cooperative. It includes the operation of a farm, but not the practice of a profession. The following conditions apply to a business entity which is a small business for purposes of the additional deduction for wages:

a. The small business shall not have had more than 20 full-time equivalent employee positions during each of the 26 consecutive weeks within the 52-week period immediately preceding the date on which an individual for whom an additional deduction for wages is taken was hired. Full-time equivalent position means any of the following:

1. An employment position requiring an average work week of 40 or more hours;
2. An employment position for which compensation is paid on a salaried full-time basis without regard to hours worked; or
3. An aggregation of any number of part-time positions which equal one full-time position. For purposes of this subrule each part-time position shall be categorized with regard to the average number of hours worked each week as a one-quarter, half, three-quarter, or full-time position, as set forth in the following table:

Average Number of Weekly Hours	Category
More than 0 but less than 15	¼
15 or more but less than 25	½
25 or more but less than 35	¾
35 or more	1 (full-time)

b. The small business shall not have more than $1 million in annual gross revenues, or after July 1, 1984, $3 million in annual gross revenues or as the average of the three preceding tax years. "Annual gross revenues" means total sales, before deducting returns and allowances but after deducting corrections and trade discounts, sales taxes and excise taxes based on sales, as determined in accordance with generally accepted accounting principles.

c. The small business shall not be an affiliate or subsidiary of a business which is dominant in its field of operation. "Dominant in its field of operation" means having more than 20 full-time equivalent employees and more than $1 million of annual gross revenues, or after July 1, 1984, $3 million of annual gross revenues or as the average of the three preceding tax years. "Affiliate or subsidiary of a business dominant in its field of operations" means a business which is at least 20 percent owned by a business dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalent, of a business dominant in that field of operation.

d. "Operation of a farm" means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing or the production of livestock. Operation of a farm shall not include the

production of timber, forest products, nursery products, or sod and operation of a farm shall not include a contract where a processor or distributor of farm products or supplies provides spraying, harvesting or other farm services.

e. "The practice of a profession" means a vocation requiring specialized knowledge and preparation including but not limited to the following: medicine and surgery, podiatry, osteopathy, osteopathic medicine and surgery, psychology, psychiatry, chiropractic, nursing, dentistry, dental hygiene, optometry, speech pathology, audiology, pharmacy, physical therapy, occupational therapy, mortuary science, law, architecture, engineering and surveying, and accounting.

40.21(3) Definitions.

a. The term *"handicapped person"* means any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment.

The term handicapped does not include any person who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the person from performing the duties of employment or whose employment, by reason of current use of alcohol or drugs, would constitute a direct threat to the property or the safety of others.

b. The term *"physical or mental impairment"* means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

c. The term *"major life activities"* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

d. The term *"has a record of such impairment"* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

e. The term *"is regarded as having such an impairment"* means:

1. Has a physical or mental impairment that does not substantially limit major life activities but that is perceived as constituting such a limitation;

2. Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

3. Has none of the impairments defined as physical or mental impairments, but is perceived as having such an impairment.

f. The term *"successfully completing a probationary period"* includes those instances where the employee quits without good cause attributable to the employer during the probationary period or was discharged for misconduct during the probationary period.

g. The term *"probationary period"* means the period of probation for newly hired employees, if the employer has a written probationary policy. If the employer has no written probationary policy for newly hired employees, the probationary period shall be considered to be six months from the date of hire.

40.21(4) If a newly hired employee has been certified as either a vocational rehabilitation referral or an economically disadvantaged ex-convict for purposes of qualification for the work opportunity tax credit under Section 51 of the Internal Revenue Code, that employee shall be considered to have met the qualifications for the additional wage deduction.

A vocational rehabilitation referral is any individual certified by a state employment agency as having a physical or mental disability which, for the individual constitutes or results in a substantial handicap to employment. In addition, the individual must have been referred to the employer after completion or while receiving rehabilitation services pursuant to either a state or federal approved vocational rehabilitation program.

For all other newly hired employees, the employer has the burden of proof to show that the employees meet the qualifications for the additional wage deduction.

40.21(5) The taxpayer shall include a schedule with the filing of its tax return showing the name, address, social security number, date of hiring and wages paid of each employee for which the taxpayer claims the additional deduction for wages.

40.21(6) If the employee for which an additional deduction for wages was allowed fails to successfully complete a probationary period and the taxpayer has already filed an Iowa corporation income tax return taking the additional deduction for wages, the taxpayer shall file an amended return adding back the additional deduction for wages. The amended return shall state the name and social security number of the employee who failed to successfully complete a probationary period.

This rule is intended to implement Iowa Code section 422.7 as amended by 2001 Iowa Acts, House Files 287 and 759.

701—40.22(422) Disability income exclusion.

40.22(1) Effective for tax years beginning on or after January 1, 1984, a taxpayer who is permanently and totally disabled and has not attained age 65 by the end of the tax year or reached mandatory retirement age can exclude a maximum of $100 per week of payments received in lieu of wages. In order for the payments to qualify for the exclusion, the payments must be made under a plan providing payment of such amounts to an employee for a period during which the employee is absent from work on account of permanent and total disability.

40.22(2) In the case of a married couple where both spouses meet the qualifications for the disability exclusion, each spouse may exclude $5,200 of income received on account of disability.

40.22(3) There is a reduction in the exclusion, dollar for dollar, to the extent that a taxpayer's federal adjusted gross income (determined without this exclusion and without the deduction for the two-earner married couple) exceeds $15,000. In the case of a married couple, both spouses' incomes must be considered for purposes of determining if the disability income exclusion is to be reduced for income that exceeds $15,000. The taxpayers' disability income exclusion is eliminated when the taxpayers' federal adjusted gross income is equal to or exceeds $20,200. The deduction of the taxpayers' disability income exclusion because the taxpayers' federal adjusted gross income is greater than $15,000 is illustrated in the following example:

A married couple is filing their 1984 Iowa return. The husband retired during the year and received $8,000 in disability income during the 40-week period in 1984 that he was retired. The husband's other income in 1984 was $2,500 and the wife's income was $7,500.

Of the $8,000 in disability payments received by the husband in the 40-week period he was retired in 1984, only $4,000 is eligible for the exclusion. This is because the maximum amount that can be excluded on a weekly basis as a result of the disability exclusion is $100.

However, the $4,000 that qualifies for the exclusion must be reduced to the extent that the taxpayer's federal adjusted gross income exceeds $15,000. In this example, the taxpayer's federal adjusted gross income is $18,000, which exceeds $15,000 by $3,000. Therefore, the amount eligible for exclusion of $4,000 must be reduced by $3,000. This gives the taxpayers an exclusion of $1,000.

40.22(4) For purposes of the disability income exclusion, "permanent and total disability" means the individual is unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment which (a) can be expected to last for a continuous period of 12 months or more or (b) can be expected to result in death. A certificate from a qualified physician must be attached to the individual's tax return attesting to the taxpayer's permanent and total disability as of the date the individual claims to have retired on disability. The certificate must include the name and address of the physician and contain an acknowledgment that the certificate will be used by the taxpayer to claim the exclusion. In an instance where an individual has been certified as permanently and totally disabled by the Veterans Administration, Form 6004 may be attached to the return instead of the physician's certificate. Form 6004 must be signed by a physician on the VA disability rating board.

40.22(5) Mandatory retirement age is the age at which the taxpayer would have been required to retire under the employer's retirement program.

40.22(6) The disability income exclusion is not applicable to federal income tax for tax years beginning after 1983. There are many revenue rulings, court cases and other provisions which were

relevant to the disability income exclusion for the tax periods when the exclusion was available on federal returns. These provisions, court cases and revenue rulings concerning the disability income exclusion are equally applicable to the disability income exclusion on Iowa returns for tax years beginning on or after January 1, 1984.

This rule is intended to implement Iowa Code section 422.7.

701—40.23(422) Social security benefits. For tax years beginning on or after January 1, 1984, but before January 1, 2014, social security benefits received are taxable on the Iowa return. Although Tier 1 railroad retirement benefits were taxed similarly as social security benefits for federal income tax purposes beginning on or after January 1, 1984, these benefits are not subject to Iowa income tax. 45 U.S.C. Section 231m prohibits taxation of railroad retirement benefits by the states.

The following subrules specify how social security benefits are taxed for Iowa individual income tax purposes for tax years beginning on or after January 1, 1984, but prior to January 1, 1994; for tax years beginning on or after January 1, 1994, but prior to January 1, 2007; and for tax years beginning on or after January 1, 2007, but prior to January 1, 2014:

40.23(1) *Taxation of social security benefits for tax years beginning on or after January 1, 1984, but prior to January 1, 1994.* For tax years beginning on or after January 1, 1984, but prior to January 1, 1994, social security benefits are taxable on the Iowa return to the same extent as the benefits are taxable for federal income tax purposes. When both spouses of a married couple receive social security benefits and file a joint federal income tax return but separate returns or separately on the combined return form, the taxable portion of the benefits must be allocated between the spouses. The following formula should be used to compute the amount of social security benefits to be reported by each spouse on the Iowa return:

$$\text{Taxable Social Security Benefits on the Federal Return} \times \frac{\text{Total Social Security Benefit Received by Husband (or Wife)}}{\text{Total Social Security Benefits Received by Both Spouses}}$$

The example shown below illustrates how taxable social security benefits are allocated between spouses:

A married couple filed a joint federal income tax return for 1984. They filed separately on the combined return form for Iowa income tax purposes. During the tax year the husband received $6,000 in social security benefits and the wife received $3,000 in social security benefits. $2,000 of the social security benefits was taxable on the federal return.

The $2,000 in taxable social security benefits is allocated to the spouses on the following basis:

Husband

$$\$2{,}000 \times \frac{\$6{,}000}{\$9{,}000} = \$1{,}333.40$$

Wife

$$\$2{,}000 \times \frac{\$3{,}000}{\$9{,}000} = \$666.60$$

In situations where taxpayers have received both social security benefits and Tier 1 railroad retirement benefits and are taxable on a portion of those benefits, the formula which follows should be used to determine the social security benefits to be included in net income:

$$\text{Taxable Social Security Benefits and Railroad Retirement Benefits on Federal Return} \times \frac{\text{Total Social Security Benefit Received}}{\text{Total Social Security Benefits and Railroad Retirement Benefits Received}}$$

40.23(2) *Taxation of social security benefits for tax years beginning on or after January 1, 1994, but prior to January 1, 2007.* For tax years beginning on or after January 1, 1994, but prior to January 1, 2007, although up to 85 percent of social security benefits received may be taxable for federal income tax

purposes, no more than 50 percent of social security benefits will be taxable for state individual income tax purposes. Thus, in the case of Iowa income tax returns for 1994 through 2006, social security benefits will be taxed as the benefits were taxed from 1984 through 1993 as described in subrule 40.23(1).

The amount of social security benefits that is subject to tax is the lesser of one-half of the annual benefits received in the tax year or one-half of the taxpayer's provisional income over a specified base amount. The provisional income is the taxpayer's modified adjusted gross income plus one-half of the social security benefits and one-half of the railroad retirement benefits received. Although railroad benefits are not taxable, one-half of the railroad retirement benefits received may be used to determine the amount of social security benefits that is taxable for state income tax purposes. Modified adjusted gross income is the taxpayer's federal adjusted gross income, plus interest that is tax-exempt on the federal return, plus any of the following incomes:

1. Savings bond proceeds used to pay expenses of higher education excluded from income under Section 135 of the Internal Revenue Code.
2. Foreign source income excluded from income under Section 911 of the Internal Revenue Code.
3. Income from Guam, American Samoa, and the Northern Mariana Islands excluded under section 931 of the Internal Revenue Code.
4. Income from Puerto Rico excluded under Section 933 of the Internal Revenue Code.

A taxpayer's base amount is: *(a)* $32,000 if married and a joint federal return was filed, *(b)* $0 if married and separate federal returns were filed by the spouses and *(c)* $25,000 for individuals who filed federal returns and used a filing status other than noted in *(a)* and *(b)*.

The IA 1040 booklet and instructions for 1994 through 2006 will include a worksheet to compute the amount of social security benefits that is taxable for Iowa income tax purposes. An example of the social security worksheet follows. Similar worksheets will be used for computing the amount of social security benefits that is taxable for years 1995 through 2006. An example of the social security worksheet follows:

1. Enter amount(s) from box 5 of all of Form(s) SSA-1099. If a joint return was filed, enter totals from box 5 of Form(s) SSA-1099 for both spouses. Do not include railroad retirement benefits from RRB-1099 here. See line 3.	1. _____
2. Divide line 1 amount above by 2.	2. _____
*3. Add amounts of the following incomes from Form 1040: wages, taxable interest income, dividend income, taxable state and local income tax refunds, alimony, business income or loss, capital gain or loss, capital gain distributions, other gains, taxable IRA distributions, taxable pensions and annuities, incomes from Schedule E, farm income or loss, unemployment compensation, other income and 1/2 of railroad retirement benefits from RRB 1099.	3. _____
4. Enter amount from Form 1040, line 8b for interest that is federally tax-exempt.	4. _____
5. Add lines 2, 3 and 4.	5. _____
6. Enter total adjustment to income from Form 1040.	6. _____
7. Subtract line 6 from line 5.	7. _____
8. Enter on line 8 one of the following amounts based on the filing status used on Form 1040: Single, Head of Household, or Qualifying Widow(er), enter $25,000. Married filing jointly, enter $32,000. Married filing separately, enter $0 ($25,000 if you did not live with spouse any time in 1994).	8. _____
9. Subtract line 8 from line 7. If zero or less enter 0. If line 9 is zero, none of the social security benefits are taxable. If line 9 is more than zero, go to line 10.	9. _____
10. Divide line 9 amount above by 2.	10. _____
11. Taxable social security benefits enter smaller of line 2 or line 10 here and on line 14 IA 1040.	11. _____

*If applicable, include on line 3 the following incomes excluded from federal adjusted gross income: foreign earned income, income excluded by residents of Puerto Rico, American Samoa, and Guam and proceeds from savings bonds used for higher education.

Married taxpayers who filed a joint federal return and are filing separate Iowa returns or separately on the combined return form can allocate taxable social security benefits between them with the following formula.

$$\text{Taxable Social Security Benefits From Worksheet} \times \frac{\text{Total Social Security Benefit Received by Husband (or Wife)}}{\text{Total Social Security Benefits Received by Both Spouses}}$$

40.23(3) *Taxation of social security benefits for tax years beginning on or after January 1, 2007, but prior to January 1, 2014.* For tax years beginning on or after January 1, 2007, but prior to January 1, 2014, the amount of social security benefits subject to Iowa income tax will be computed as described in subrule 40.23(2), but will be further reduced by the following percentages:

Calendar years 2007 and 2008	32%
Calendar year 2009	43%
Calendar year 2010	55%
Calendar year 2011	67%
Calendar year 2012	77%
Calendar year 2013	89%

The Iowa individual income tax booklet and instructions for 2007 through 2013 will include a worksheet to compute the amount of social security benefits that is taxable for Iowa income tax purposes. An example of the social security worksheet follows:

1. Enter amount(s) from box 5 of Form(s) SSA-1099. If a joint return was filed, enter totals from box 5 of Form(s) SSA-1099 for both spouses. Do not include railroad retirement benefits from RRB-1099 here. See line 3.	1. _____
2. Divide line 1 amount above by 2.	2. _____
*3. Add amounts of the following incomes from Form 1040: wages, taxable interest income, dividend income, taxable state and local income tax refunds, alimony, business income or loss, capital gain or loss, capital gain distributions, other gains, taxable IRA distributions, taxable pensions and annuities, incomes from Schedule E, farm income or loss, unemployment compensation, other income and 1/2 of railroad retirement benefits from RRB 1099.	3. _____
4. Enter amount from Form 1040, line 8b for interest that is federally tax-exempt.	4. _____
5. Add lines 2, 3 and 4.	5. _____
6. Enter total adjustment to income from Form 1040.	6. _____
7. Subtract line 6 from line 5.	7. _____
8. Enter on line 8 one of the following amounts based on the filing status used on Form 1040: Single, Head of Household, or Qualifying Widow(er), enter $25,000. Married filing jointly, enter $32,000. Married filing separately, enter $0 ($25,000 if you did not live with spouse anytime during the year).	8. _____
9. Subtract line 8 from line 7. If zero or less enter 0. If line 9 is zero, none of the social security benefits are taxable. If line 9 is more than zero, go to line 10.	9. _____
10. Divide line 9 amount above by 2.	10. _____

11. Taxable social security benefits before phase-out exclusion. Enter smaller of line 2 or line 10.	11. _____
12. Multiply line 11 by applicable exclusion percentage.	12. _____
13. Taxable social security benefits. Subtract line 12 from line 11.	13. _____

*If applicable, include on line 3 the following incomes excluded from federal adjusted gross income: foreign earned income, income excluded by residents of Puerto Rico, American Samoa, and Guam and proceeds from savings bonds used for higher education and employer-provided adoption benefits.

Married taxpayers who filed a joint federal return and are filing separate Iowa returns or separately on the combined return form can allocate taxable social security benefits between them with the following formula.

$$\text{Taxable Social Security Benefits From Worksheet} \times \frac{\text{Total Social Security Benefit Received by Spouse 1 (or Spouse 2)}}{\text{Total Social Security Benefits Received by Both Spouses}}$$

The amount on line 12 of this worksheet is the phase-out exclusion of social security benefits which must be included in net income in determining whether an Iowa return must be filed in accordance with rules 701—39.1(422) and 701—39.5(422), and this amount must also be included in net income in calculating the special tax computation in accordance with rule 701—39.15(422).

40.23(4) *Taxation of social security benefits for tax years beginning on or after January 1, 2014.* For tax years beginning on or after January 1, 2014, no social security benefits are taxable on the Iowa return. However, the 100 percent phase-out exclusion of social security benefits must still be included in net income in determining whether an Iowa return must be filed in accordance with rules 701—39.1(422) and 701—39.5(422), and the 100 percent phase-out exclusion of social security benefits must also be included in net income in calculating the special tax computation in accordance with rule 701—39.15(422).

This rule is intended to implement Iowa Code section 422.7 as amended by 2006 Iowa Acts, Senate File 2408.

701—40.24(99E) Lottery prizes. Prizes awarded under the Iowa Lottery Act are Iowa earned income. Therefore, individuals who win lottery prizes are subject to Iowa income tax in the aggregate amount of prizes received in the tax year, even if the individuals were not residents of Iowa at the time they received the prizes.

This rule is intended to implement Iowa Code section 99E.19.

701—40.25(422) Certain unemployment benefits received in 1979. Rescinded IAB 11/24/04, effective 12/29/04.

701—40.26(422) Contributions to the judicial retirement system. Rescinded IAB 11/24/04, effective 12/29/04.

701—40.27(422) Incomes from distressed sales of qualifying taxpayers. For tax years beginning on or after January 1, 1986, taxpayers with gains from sales, exchanges, or transfers of property must exclude those gains from net income, if the gains are considered to be distressed sale transactions.

40.27(1) *Qualifications that must be met for transactions to be considered distressed sales.* There are a number of qualifications that must be met before a transaction can be considered to be a distressed sale. The transaction must involve forfeiture of an installment real estate contract, the transfer of real or personal property securing a debt to a creditor in cancellation of that debt, or from the sale or exchange of property as a result of actual notice of foreclosure. The following three additional qualifications need to have been met.

a. The forfeiture, transfer, or sale or exchange was done for the purpose of establishing a positive cash flow.

b. Immediately before the forfeiture, transfer, or sale or exchange, the taxpayer's debt-to-asset ratio exceeded 90 percent as computed under generally accepted accounting principles.

c. The taxpayer's net worth at the end of the tax year was less than $75,000.

In determining the taxpayer's debt-to-asset ratio immediately before the forfeiture, transfer, or sale or exchange and at the end of the tax year, the taxpayer must include any asset transferred within 120 days prior to the transaction or within 120 days prior to the end of the tax year without adequate and full consideration in money or money's worth.

Proof of forfeiture of the installment real estate contract, proof of transfer of property to a creditor in cancellation of a debt, or a copy of the notice of foreclosure constitutes documentation of the distressed sale and must be made a part of the return. Balance sheets showing the taxpayer's debt-to-asset ratio immediately before the distressed sale transaction and the taxpayer's net worth at the end of the tax year must also be included with the income tax return. The balance sheets supporting the debt-to-asset ratio and the net worth must list the taxpayer's personal assets and liabilities as well as the assets and liabilities of the taxpayer's farm or other business.

For purposes of this provision, in the case of married taxpayers, except in the instance when the husband and wife live apart at all times during the tax year, the assets and liabilities of both spouses must be considered in determining the taxpayers' net worth or the taxpayers' debt-to-asset ratio.

40.27(2) *Losses from distressed sale transactions of qualifying taxpayers.* Losses from distressed sale transactions meeting the qualifications described above were disallowed prior to the time that the provision for disallowing these losses was repealed in the 1990 session of the General Assembly. Taxpayers whose Iowa income tax liabilities were increased because of disallowance of losses from distressed sales transactions may file refund claims with the department to get refunds of the taxes paid due to disallowance of the losses. Refund claims will be honored by the department to the extent that the taxpayers provide verification of the distressed sale losses and the claims are filed within the statute of limitations for refund given in Iowa Code subsection 422.73(2).

This rule is intended to implement Iowa Code section 422.7.

701—40.28(422) Losses from passive farming activities. Rescinded IAB 2/18/04, effective 3/24/04.

701—40.29(422) Intangible drilling costs. For tax years beginning on or after January 1, 1986, but before January 1, 1987, intangible drilling and development costs which pertain to any well for the production of oil, gas, or geothermal energy, and which are incurred after the commencement of the installation of the production casing for the well, are not allowed as an expense in the tax year when the costs were paid or incurred and must be added to net income. Instead of expensing the intangible drilling and development costs which are incurred after the commencement of the installation of the production casing for a well, the expenses must be amortized over a 26-month period, beginning in the month in which the costs are paid or incurred if the costs were incurred for a well which is located in the United States, the District of Columbia, and those continental shelf areas which are adjacent to United States territorial waters and over which the United States has exclusive rights with respect to the exploration and exploitation of natural resources as provided in Section 638 of the Internal Revenue Code.

In the case of intangible drilling and development costs which are incurred for oil or gas wells outside the United States, those costs must be recovered over a ten-year straight-line amortization period beginning in the year the costs are paid or incurred. However, in lieu of amortization of the costs, the taxpayer may elect to add these costs to the basis of the property for cost depletion purposes.

For tax years beginning on or after January 1, 1987, the intangible drilling costs, which are an addition to income subject to amortization, are the intangible drilling costs described in Section 57(a)(2) of the Internal Revenue Code. These intangible drilling costs are an item of tax preference for federal minimum tax purposes for tax years beginning after December 31, 1986.

This rule is intended to implement Iowa Code section 422.7.

701—40.30(422) Percentage depletion. For tax years beginning on or after January 1, 1986, but before January 1, 1987, add to net income the amount that percentage depletion of an oil, gas, or geothermal

well computed under Section 613 of the Internal Revenue Code is in excess of cost depletion computed under Section 611 of the Internal Revenue Code.

This rule is intended to implement Iowa Code section 422.7.

701—40.31(422) Away-from-home expenses of state legislators. For tax years beginning on or after January 1, 1981, but before January 1, 1987, state legislators may claim a deduction on the Iowa return of up to $50 per "legislative day" for away-from-home expenses incurred in performing the trade or business of a state legislator. For purposes of this deduction, a "legislative day" is any day during a tax year in which the legislature was in session (includes any day in which the legislature was not in session for a period of four consecutive days) or any day in which the legislature was not in session, but the legislator's physical presence was formally recorded at a committee meeting of the legislature. For federal income tax purposes, there is a requirement that in order for a state legislator to deduct away-from-home expenses, the state legislator's personal residence in the legislative district must be more than 50 miles from the state capitol. However, legislators may claim the deduction for away-from-home expenses on their state returns even in instances when their personal residences are less than 50 miles from the state capitol. State legislators whose away-from-home expenses such as expenses for food and lodging exceed $50 per legislative day may claim deductions for these expenses if they itemize these expenses when they file their state returns.

State legislators whose personal residences in their legislative districts are 50 miles or less from the state capitol may claim a deduction for meals and lodging of $50 per "legislative day." However, in lieu of either of the deduction methods previously described in this rule, any state legislator may elect to itemize adjustments to income for amounts incurred for meals and lodging for the "legislative days" of the state legislator.

This rule is intended to implement Iowa Code section 422.7.

701—40.32(422) Interest and dividends from regulated investment companies which are exempt from federal income tax. For tax years beginning on or after January 1, 1987, interest and dividends from regulated investment companies which are exempt from federal income tax under the Internal Revenue Code are subject to Iowa income tax. See rule 701—40.52(422) for a discussion of the Iowa income tax exemption of some interest and dividends from regulated investment companies that invest in certain obligations of the state of Iowa and its political subdivisions the interest from which is exempt from Iowa income tax. To the extent that a loss on the sale or exchange of stock in a regulated investment company was disallowed on an individual's federal income tax return pursuant to Section 852(b)(4)(B) of the Internal Revenue Code because the taxpayer held the stock six months or less and because the regulated investment company had invested in federal tax-exempt securities, the loss is allowed for purposes of computation of net income.

This rule is intended to implement Iowa Code section 422.7.

701—40.33(422) Partial exclusion of pensions and annuities for retired and disabled public employees. Rescinded IAB 11/24/04, effective 12/29/04.

701—40.34(422) Exemption of restitution payments for persons of Japanese ancestry. For tax years beginning on or after January 1, 1988, restitution payments authorized by P.L. 100-383 to individuals of Japanese ancestry who were interned during World War II are exempt from Iowa income tax to the extent the payments are included in federal adjusted gross income. P.L. 100-383 provides for a payment of $20,000 for each qualifying individual who was alive on August 10, 1988. In cases where the qualifying individuals have died prior to the time that the restitution payments were received, the restitution payments received by the survivors of the interned individuals are also exempt from Iowa income tax.

This rule is intended to implement Iowa Code section 422.7.

701—40.35(422) Exemption of Agent Orange settlement proceeds received by disabled veterans or beneficiaries of disabled veterans. For tax years beginning on or after January 1, 1989, proceeds

from settlement of a lawsuit against the manufacturer or distributor of a Vietnam herbicide received by a disabled veteran or the beneficiary of a disabled veteran for damages from exposure to the herbicide are exempt from Iowa income tax to the extent the proceeds are included in federal adjusted gross income. For purposes of this rule, Vietnam herbicide means a herbicide, defoliant, or other causative agent containing a dioxin, including, but not limited to, Agent Orange used in the Vietnam conflict beginning December 22, 1961, and ending May 7, 1975.

This rule is intended to implement Iowa Code section 422.7.

701—40.36(422) Exemption of interest earned on bonds issued to finance beginning farmer loan program. Interest earned on or after July 1, 1989, from bonds or notes issued by the agricultural development authority to finance the beginning farmer loan program is exempt from the state income tax.

This rule is intended to implement Iowa Code sections 175.17 and 422.7.

701—40.37(422) Exemption of interest from bonds issued by the Iowa comprehensive petroleum underground storage tank fund board. Interest received from bonds issued by the Iowa comprehensive petroleum underground storage tank fund board is exempt from state individual income tax. This is effective for interest received from these bonds on or after May 5, 1989, but before July 1, 2009.

This rule is intended to implement Iowa Code section 455G.6.

701—40.38(422) Capital gains deduction or exclusion for certain types of net capital gains. Effective for tax years beginning on or after January 1, 1990, but prior to January 1, 1998, a deduction is allowed in computing net income for 45 percent of the net capital gains described in subrules 40.38(1) to 40.38(4). See subrules 40.38(6) through 40.38(14) for the capital gain deduction or exclusion which is applicable for net capital gains received in tax years beginning on or after January 1, 1998. However, the aggregate net capital gains from subrules 40.38(1) through 40.38(4) which are to be considered for the tax year for the capital gain deduction cannot exceed $17,500 for all individual taxpayers except married taxpayers filing separate state returns. In the case of married taxpayers filing separate returns, the aggregate net capital gains to be considered for the deduction cannot exceed $8,750 per spouse. Married taxpayers filing separately on the combined return form shall prorate the $17,500 capital gain deduction limitation between the spouses in the ratio of each spouse's net capital gains from subrules 40.38(1) through 40.38(4) to the total net capital gains of both spouses from subrules 40.38(1) through 40.38(4). Effective for tax years beginning on or after January 1, 1994, the capital gain deduction is not allowed for purposes of computation of a net operating loss for the tax year and for purposes of computing the income for a tax year to which a net operating loss is carried. Subrule 40.38(5) includes information on how the capital gain deduction is treated in a tax year with a net operating loss and in a tax year with the capital gain deduction where a net operating loss deduction is carried.

40.38(1) Net capital gains from sales or exchanges of real property, tangible personal property, or other assets of a business owned by the taxpayer for a minimum of ten years and in which the taxpayer has materially participated for a minimum of ten years. Net capital gains from the sales or exchanges of real property, tangible personal property, or other assets from a business the taxpayer has owned for ten years and in which the taxpayer materially participated as defined in Section 469(h) of the Internal Revenue Code for ten years qualify for the capital gain deduction. In the case of installment sales of real property, tangible personal property, or other assets of a business, where the selling price of the business assets is paid to the seller in one or more years after the year in which the sales transaction occurred, all installments received on or after January l, 1990, qualify for the capital gains deduction, assuming the taxpayers had met the ownership and material participation requirements at the time the sales transactions occurred. *Herbert Clausen and Sylvia Clausen v. the Iowa Department of Revenue and Finance,* Law No. 32313, Crawford County District Court, May 24, 1995. For example, if a taxpayer received an installment payment in 1996 from the sale of the taxpayer's farmland in 1988, the installment

received in 1996 would qualify for the 45 percent capital gain deduction if the taxpayer had owned the farmland at least ten years at the time of the sale and the taxpayer had materially participated in the farm business for a minimum of ten years at the time of the sale. The following terms and definitions clarify which sales and exchanges of assets of a business qualify for the capital gain deduction authorized in rule 701—40.38(422).

a. Business. A business includes any activity engaged in by a person with the object of gain, benefit, or advantage, either direct or indirect. In addition, a business for purposes of the capital gains deduction in rule 40.38(422) must have been owned by the taxpayer for at least ten years and the taxpayer must have materially participated in the business for at least ten years.

b. Assets of a business. Those assets of a business which may qualify for capital gain treatment under rule 40.38(422) if the assets are sold or exchanged under the conditions described in this rule are real property, tangible personal property, or other assets of a business which were held by the business more than one year at the time the assets were sold or exchanged. However, for purposes of this subrule, tangible personal property of a business does not include cattle or horses described in subrule 40.38(2), other livestock described in subrule 40.38(3), or timber which is described in subrule 40.38(4).

c. Material participation in a business if the taxpayer has been involved in the operation of the business on a regular, continuous, and substantial basis for ten or more years at the time assets of the business are sold or exchanged. If the taxpayer has involvement in a business which meets the criteria for material participation in an activity under Section 469(h) of the Internal Revenue Code and the Treasury rules for material participation in §1.469-5 and §1.469-5T, for ten years or more immediately before the sale or exchange of the assets of a business, the taxpayer shall be considered to have satisfied the material participation requirement for this subrule. In determining whether or not a particular taxpayer has material participation in a business, participation of the taxpayer's spouse in a business must also be taken into account. The spouse's participation in the business must be taken into account even if the spouse does not file a joint state return with the taxpayer, or if the spouse has no ownership interest in the business. A taxpayer is most likely to have material participation in a business if that business is the taxpayer's principal business. However, it is possible for a taxpayer to have had material participation in more than one business in a tax year for purposes of this subrule.

A highly relevant factor in material participation in a business is how regularly the taxpayer is present at the place where the principal operations of a business are carried on. In addition, a taxpayer is likely to have material participation in a business if the taxpayer performs all functions of the business.

The fact that the taxpayer utilizes employees or contracts services to perform daily functions in a business will not prevent the taxpayer from qualifying as materially participating in the business.

Generally, an individual will be considered as materially participating in a tax year if the taxpayer satisfies or meets any of the following tests:

1. The individual participates in the business for more than 500 hours in the taxable year.

EXAMPLE. Joe and Sam Smith are brothers who formed a computer software business in 1981 in Altoona, Iowa. In 1991, Joe spent approximately 550 hours selling software for the business and Sam spent about 600 hours developing new software programs for the business. Both Joe and Sam would be considered to have materially participated in the computer software business in 1991.

2. The individuals' participation in the business constitutes substantially all of the participation in the business for the tax year.

EXAMPLE. Roger McKee is a teacher in a small town in southwest Iowa. He owns a truck with a snowplow blade. He contracts with some of his neighbors to plow driveways. He maintains and drives the truck. In the winter of 1991, there was little snow so Mr. McKee spent only 20 hours in 1991 in clearing driveways. Roger McKee is deemed to have materially participated in the snowplowing business in 1991.

3. The individual participates in the business for more than 100 hours in the tax year and no other individual spends more time in the business activity than the taxpayer.

4. The individual participates in two or more businesses, excluding rental businesses, in the tax year and participates for more than 500 hours in all of the businesses and more than 100 hours in each

of the businesses. Thus, the taxpayer is regarded as materially participating in each of the business activities.

EXAMPLE. Frank Evans is a full-time CPA. He owns a restaurant and a record store. In 1992, Mr. Evans spent 400 hours in working at the restaurant and 150 hours at the record store. Mr. Evans is treated as a material participant in each of the businesses in 1992.

5. An individual who has materially participated (by meeting any of the tests in numbered paragraphs "1" through "4" above) in a business for five of the past ten years will be deemed a material participant in the current year.

EXAMPLE. Joe Bernard is the co-owner of a plumbing business. He retired in 1988 after 35 years in the business. Since Joe's retirement, he has retained his interest in the business. Joe is considered to be materially participating in the business for the years through 1993 or for the five years after the year of retirement. Thus, if the plumbing business is sold before the end of 1993, the sale will qualify for the Iowa capital gain on Joe's 1993 Iowa return because he was considered to be a material participant in the business according to the federal rules for material participation.

6. An individual who has materially participated in a personal service activity for at least three years will be treated as a material participant for life. A personal service activity involves the performance of personal services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting or any other trade or business in which capital is not a material income-producing factor.

EXAMPLE. Gerald Williams is a retired attorney, but retains an interest in the law firm he was involved in for over 40 years. Because the law firm is a personal services activity, Mr. Williams is considered to be a material participant in the law firm even after his retirement from the firm.

7. An individual who participates in the business activity for more than 100 hours may be treated as materially participating in the activity if, based on all the facts and circumstances, the individual participates on a regular, continuous, and substantial basis. The following paragraphs provide clarification regarding the facts and circumstances test:

- A retired or disabled farmer is treated as materially participating in a farming activity for the current year if the farmer materially participated in the activity for five of the last eight years before the farmer's retirement or disability. That is, the farmer must have been subject to self-employment tax in five of the eight years before retirement or disability and had to have been either actively farming so the income was reported on Schedule F or materially participating in a crop-share activity for five of those eight last years prior to retirement or disability.

EXAMPLE. Fred Smith was 80 years old in 1991 when he sold 200 acres of farmland he had owned since 1951. Mr. Smith retired in 1981. In the last eight years before retirement, Mr. Smith was paying self-employment tax on his farm income which was reported on Schedule F for each of those eight years. In the years before he sold the farmland, Mr. Smith was leasing the farmland on a cash-rent basis, whereby Mr. Smith would not be considered to be materially participating in the farming activity. Because Mr. Smith had material participation in the farmland in the eight years before retirement, Mr. Smith was considered to have met the material participation requirement, so the capital gain qualified for the Iowa capital gain deduction.

- A surviving spouse of a farmer is treated as materially participating in the farming activity for the current tax year if the farmer met the material participation requirements at the time of death and the spouse actively participates in the farming business activity. That is, the spouse participates in the making of management decisions relating to the farming activity or arranges for others to provide services (such as repairs, plowing, and planting).

- Management activities of a taxpayer are not considered for purposes of determining if there was material participation if either of the following apply: Anybody other than the taxpayer is compensated for management services; or somebody provides more hours of management services than the taxpayer.

Material participation by individuals in specific types of activities. The following are individuals in specific types of activities that may have unique problems or circumstances related to material participation in a business:

1. Limited partners of a limited partnership. The limited partners will not be treated as materially participating in any activity of a limited partnership except in a situation where the limited partner would be treated as materially participating under the material participation tests in paragraphs "1," "5" and "6" above as if the taxpayer were not a limited partner for the tax year.

2. Work not customarily done by owners. Work done in connection with an activity shall not be treated as participation in the activity if both of the following apply:

Such work is not of a type that is customarily done by an owner of such activity; and

One of the principal purposes for the performance of such work is to avoid the disallowance of any loss or credit from such activity.

3. Participation in a business by an investor. Work done by an individual in the individual's capacity as an investor in an activity is not considered to be material participation in the business or activity unless the investor is directly involved in the day-to-day management or operations of the activity or business.

4. Cash farm lease. A farmer who rents farmland on a cash basis will not generally be considered to be materially participating in the farming activity. The burden is on the landlord to show there was material participation in the cash-rent farm activity.

5. Farm landlord involved in crop-share arrangement. A farm landlord is subject to self-employment tax on net income from a crop-share arrangement with a tenant. The landlord is considered to be materially participating with the tenant in the crop-share activity if the landlord meets one of the four following tests:

TEST 1. The landlord does any three of the following: (1) Pay or be obligated to pay for at least half the direct costs of producing the crop; (2) Furnish at least half the tools, equipment, and livestock used in producing the crop; (3) Consult with the tenant; and (4) Inspect the production activities periodically.

TEST 2. The landlord regularly and frequently makes, or takes part in making, management decisions substantially contributing to or affecting the success of the enterprise.

TEST 3. The landlord worked 100 hours or more spread over a period of five weeks or more in activities connected with crop production.

TEST 4. The landlord has done tasks or performed duties which, considered in their total effect, show that the landlord was materially and significantly involved in the production of the farm commodities.

6. Conservation reserve payments. Farmers entering into long-term contracts providing for less intensive use of highly erodible or other specified cropland can receive compensation for conversion of such land in the form of an "annualized rental payment." Although the CRP payments are referred to as "rental payments," the payments are considered to be receipts from farm operations and not rental payments from real estate.

If an individual is receiving CRP payments and is not considered to be retired from farming, the CRP payments are subject to self-employment tax. If individuals actively manage farmland placed in the CRP program by directly participating in seeding, mowing, and planting the farmland or by overseeing these activities, the owner will be considered to have had material participation in the farming activity.

7. Rental activities or businesses. For purposes of subrules 40.38(1) and 40.38(7), the general rule is that a taxpayer who actively participates in a rental activity or business which would be considered to have been material participation in another business or activity would be deemed to have had material participation in the rental activity unless covered by a specific exception in this subrule (for example, the exceptions for farm rental activities in numbered paragraphs "4," "5," and "6" immediately above). Rental activity or rental business is as the term is used in Section 469(c) of the Internal Revenue Code.

EXAMPLE. Ryan Stanley is an attorney who has owned two duplex units since 1991 and has received rental income from these duplexes since 1991. Mr. Stanley is responsible for the maintenance of the duplexes and may hire other individuals to perform repairs and other upkeep on the duplexes. However, no person spends more time in maintaining the duplexes than Mr. Stanley. The duplexes are sold in 2004, resulting in a capital gain. Mr. Stanley can claim the capital gain deduction on the 2004 Iowa return since he met the material participation requirements for this rental activity.

40.38(2) Net capital gains from sales of cattle or horses used for certain purposes which were held for 24 months by taxpayers who received more than one-half of their gross incomes from farming or ranching. Net capital gains from the sales of cattle or horses held 24 months or more for breeding,

dairy, or sporting purposes qualify for the capital gains deduction on limited capital gains provided in rule 40.38(422) if more than 50 percent of the taxpayer's gross income in the tax year is from farming or ranching operations. Proper records should be kept showing purchase and birth dates of cattle and horses. The absence of records may make it impossible for the owner to show that the owner has held a particular animal for the necessary holding period. Whether cattle or horses are held for draft, breeding, sporting, or dairy purposes depends on all the facts and circumstances of each case.

Whether or not cattle or horses sold by the taxpayer after the taxpayer has held them 24 months or more were held for draft, breeding, dairy, or sporting purposes may be determined from federal court cases on such sales and the standards and examples included in Treasury Regulations §1.1231-2.

A taxpayer's gross income from farming or ranching includes amounts the individual has received in the tax year from cultivating the soil or raising or harvesting any agricultural commodities. This includes the income from the operation of a stock, dairy, poultry, fish, bee, fruit, or truck farm, plantation, ranch, nursery, range, orchard, or oyster bed, as well as income in the form of crop shares received from the use of the taxpayer's land. It also includes total gains from sales of draft, breeding, dairy, or sporting livestock. In the case of individual income tax returns for the 1988 tax year gross income from farming includes the total of the amounts from line 12 or line 52 of Schedule F and line 8 of Form 4835, (Farm Rental Income and Expenses), plus the share of partnership income from farming, the share of distributable net taxable income from farming of an estate or trust, and total gains from the sale of livestock held for draft, breeding, sport, or dairy purposes, as shown on Form 4797 (Sale of Business Property). In the case of an individual's returns for tax years beginning after 1988, equivalent lines from returns and supplementary forms would be used to determine a taxpayer's gross income from farming or ranching for those years.

To make the calculation as to whether more than half of the taxpayer's gross income in the tax year is from farming or ranching operations, the gross income from farming or ranching as determined in the previous paragraph is divided by the taxpayer's total gross income. If the resulting percentage is greater than 50 percent, the taxpayer's capital gains from sales of cattle and horses described previously in this subrule will be considered for the capital gain deduction provided in rule 40.38(422).

In instances where married taxpayers file a joint return, the gross income from farming or ranching of both spouses will be considered for the purpose of determining whether or not the taxpayers received more than half of their gross income from farming or ranching.

However, in situations where married taxpayers file separate Iowa returns or separately on the combined return form, each spouse must separately determine whether or not that spouse has more than 50 percent of gross income from farming or ranching operations.

40.38(3) Net capital gains from sale of breeding livestock, other than cattle or horses, held 12 or more months by taxpayers who received more than one-half of gross incomes from farming or ranching. Net capital gains from the sale of breeding livestock, other than cattle or horses, held 12 or more months from the date of acquisition qualify for the capital gain deduction in rule 40.38(422), if more than one-half of the taxpayer's gross income is from farming or ranching. For the purposes of this subrule, "livestock" has a broad meaning and includes hogs, mules, donkeys, sheep, goats, fur-bearing mammals, and other mammals. Livestock does not include poultry, chickens, turkeys, pigeons, geese, other birds, fish, frogs, reptiles, etc. If livestock other than cattle or horses is considered to have been held for breeding purposes under the criteria established in Treasury Regulation §1.1231-2, the livestock will also be deemed to have been breeding livestock for this subrule. In addition, for the purposes of this subrule livestock does not include cattle and horses held for 24 or more months for draft, breeding, dairy, or sporting purposes which were described in subrule 40.38(2).

The procedure in subrule 40.38(2) for determining whether or not more than 50 percent of a taxpayer's gross income is from farming or ranching operations is also applicable for this subrule.

40.38(4) Net capital gains from sales of timber held by the taxpayer more than one year. Effective for tax years beginning on or after January 1, 1990, capital gains from qualifying sales of timber held by the taxpayer for more than one year are eligible for the capital gains deduction described in rule 40.38(422). In all of the following examples of circumstances where gains from sales of timber qualify for capital gains treatment, it is assumed that the timber sold was held by the owner for more than one year at the

time the timber was sold. The owner of the timber can be the owner of the land on which the timber was cut or the holder of a contract to cut the timber. In the case where a taxpayer sells standing timber the taxpayer held for investment, any gain from the sale is a capital gain. Timber includes standing trees usable for lumber, pulpwood, veneer, poles, pilings, crossties, and other wood products. It does not apply to sales of pulpwood cut by a contractor from the tops and limbs of felled trees. Under the general rule, the cutting of timber results in no gain or loss, and it is not until the sale or exchange that gain or loss is realized. But if a taxpayer owned, or had a contractual right to cut timber, the taxpayer may make an election to treat the cutting of timber as a sale or exchange in the year the timber is cut. Gain or loss on the cutting of the timber is determined by subtracting the adjusted basis for depletion of the timber from the fair market value of the timber on the first day of the tax year in which the timber is cut. For example, the gain on this type of transaction is computed as follows:

Fair market value of timber on January 1, 1990	$400,000
Minus: Adjusted basis for depletion	100,000
Capital gain on cutting of timber	$300,000

The fair market value shown above of $400,000 is the basis of the timber. A later sale of the cut timber, including treetops and stumps would result in ordinary income for the taxpayer and not a capital gain.

Evergreen trees, such as those used as Christmas trees, that are more than six years old at the time they are severed from their roots and sold for ornamental purposes, are included in the definition of timber for purposes of this subrule. The term "evergreen trees" is used in its commonly accepted sense and includes pine, spruce, fir, hemlock, cedar, and other coniferous trees. Where customers of the taxpayer cut down the Christmas tree of their choice on the taxpayer's farm, there is no sale until the tree is cut. However, "evergreen trees" sold in a live state do not qualify for capital gain treatment.

Capital gains or losses also are received from sales of timber by a taxpayer who has a contract which gives the taxpayer an economic interest in the timber. The date of disposal of the timber shall be the day the timber is cut, unless payment for the timber is received before the timber is cut. Under this circumstance, the taxpayer may treat the date of the payment as the date of disposal of the timber.

Additional information about gains and losses from the sale of timber is included under Treasury Regulations §1.631-1 and §1.631-2.

40.38(5) Treatment of capital gain deduction for tax years with net operating losses and for tax years to which net operating losses are carried. The following paragraphs describe the tax treatment of the capital gain deduction in a tax year with a net operating loss and the tax treatment of a capital gain deduction in a tax year to which a net operating loss was carried:

a. For tax years beginning on or after January 1, 1994, the capital gain deduction otherwise allowable on a return is not allowed for purposes of computing a net operating loss from the return which can be carried to another tax year and applied against the income for the other tax year.

EXAMPLE. Joe Jones filed a 1994 return showing a net loss of $12,000. On this return Mr. Jones claimed a capital gain deduction of $3,000 from sale of breeding stock, other than cattle or horses, held 12 months or more which was considered in computing the loss of $12,000. However, the $3,000 capital gain deduction is not allowed in the computation of the net operating loss deduction for 1994 for purposes of carrying the net operating loss deduction to another tax year. Thus, the net operating loss deduction for 1994 is $9,000.

b. In the case of net operating losses for tax years beginning on or after January 1, 1994, which are carried back to a tax year prior to 1994 where the taxpayer has claimed the capital gains deduction described above, the capital gains deduction is not allowed for purposes of computing the income to which the net operating loss deduction is applied.

EXAMPLE. John Brown had a net operating loss of $20,000 on the Iowa return he filed for 1994. Mr. Brown elected to carry back the net operating loss to his 1991 Iowa return. The 1991 return showed a taxable income of $27,000 which included a capital gain deduction of $3,000. For purposes of computing the income in the carryback year to which the net operating loss would be applied, the income was increased by $3,000 to disallow the capital gain deduction properly allowed in computing taxable income

for the carryback year. Therefore, the net operating loss deduction from 1994 was applied to an income of $30,000 for the carryback year.

40.38(6) Exclusion of net capital gains from the sales of real property, from the sales of assets of a business entity, from the sales of certain livestock of a business, from the sales of timber, from liquidation of assets of certain corporations, and from certain stock sales which are treated as acquisition of assets of the corporation. For tax years beginning on or after January 1, 1998, net capital gains from the sale of the assets of a business described in subrules 40.38(7) to 40.38(13) are excluded in the computation of net income for qualified individual taxpayers. Net capital gains means capital gains net of capital losses because Iowa's starting point for computing net income is federal adjusted gross income. Subrule 40.38(14) describes situations in which the capital gain deduction otherwise allowed is not allowed for purposes of computation of a net operating loss or for computation of the taxable income for a tax year to which a net operating loss is carried.

40.38(7) Net capital gains from the sale of real property used in a business. Net capital gains from the sale of real property used in a business are excluded from net income on the Iowa return of the owner of a business to the extent the owner had held the real property in the business for ten or more years and the owner had materially participated in the business for at least ten years. For purposes of this provision, material participation is defined in Section 469(h) of the Internal Revenue Code and described in detail in subrule 40.38(1), paragraph *"c."*

For capital gains reported for tax years ending prior to January 1, 2006, the term "held" is defined as "owned." See Decision of the Administrative Law Judge in James and Linda Bell, Docket No. 01DORF013, January 15, 2002. Therefore, the real property had to be owned by the taxpayer for ten or more years to meet the ownership requirement for the capital gain deduction for tax years ending prior to January 1, 2006. For capital gains reported for tax years ending on or after January 1, 2006, the term "held" is determined using the holding period provisions set forth in Section 1223 of the Internal Revenue Code and the federal regulations which adopt Section 1223. Therefore, as long as the holding period used to compute the capital gain is ten years or more, the ownership requirement for the capital gain deduction will be met for tax years ending on or after January 1, 2006.

Note that for purposes of taxation of capital gains from the sales of real property of a business by a taxpayer, there is no waiver of the ten-year material participation requirement when the property is sold to a lineal descendant of the taxpayer as there is for capital gains from sales of businesses described in subrule 40.38(8).

In situations in which real property was sold by a partnership, subchapter S corporation, limited liability company, estate, or trust and the capital gain from the sale of the real property flows through to the owners of the business entity for federal income tax purposes, the owners can exclude the capital gain from their net incomes if the real property was owned for ten or more years and the owners had materially participated in the business for ten years prior to the date of sale of the real property, irrespective of whether the type of business entity changed during the ten-year period prior to the date of sale. That is, if the owner of the business had owned and materially participated in the business in the entire ten-year period before the sale, the fact that the business changed from one type of entity to another during the period does not disqualify the owner from excluding capital gains from the sale of real estate owned by the business during that whole ten-year period.

Capital gains from the sale of real property by a C corporation do not qualify for the capital gain exclusion except under the specific circumstances of a liquidation described in subrule 40.38(12).

Capital gains from the sale of real property held for ten or more years for speculation but not used in a business also do not qualify for the capital gain exclusion.

EXAMPLE 1. ABC Company, an S corporation, owned 1,000 acres of land. John Doe is the sole shareholder of ABC Company and had materially participated in ABC Company and owned ABC Company for more than ten years at the time 500 acres of the land were sold for a capital gain of $100,000 in 1998. The capital gain recognized in 1998 by ABC Company and which passed to John Doe as the shareholder of ABC Company is exempt from Iowa income tax because Mr. Doe met the material participation and ownership time requirements.

EXAMPLE 2. John Smith and Sam Smith both owned 50 percent of the stock in Smith and Company which was an S corporation that held 1,000 acres of farmland. Sam Smith had managed all the farming operations for the corporation from the time the corporation was formed in 1980. John Smith was an attorney who lived and practiced law in Denver, Colorado. John Smith was the father of Sam Smith. In 1998, Smith and Company sold 200 acres of the farmland for a $50,000 gain. $25,000 of the gain passed through to John Smith and $25,000 of the gain passed through to Sam Smith. The farmland was sold to Jerry Smith, who was another son of John Smith. Both John Smith and Sam Smith had owned the corporation for at least ten years at the time the land was sold, but only Sam Smith had materially participated in the corporation for the last ten years. Sam Smith could exclude the $25,000 capital gain from the land sale because he had met the time of ownership and time of material participation requirements. John Smith could not exclude the $25,000 gain since although he had met the time of ownership requirement, he did not meet the material participation requirement. Although the land sold by the corporation was sold to John Smith's son, a lineal descendant of John Smith, the capital gain John Smith realized from the land sale does not qualify for exemption for state income tax purposes. There is no waiver of the ten-year material participation requirement for taxpayer's sales of real estate from a business to a lineal descendant of the taxpayer as is described for sales of business assets in subrule 40.38(8).

EXAMPLE 3. Jerry Jones had owned and had materially participated in a farming business for 15 years and raised row crops in the business. There were 500 acres of land in the farming business; 300 acres had been held for 15 years, and 200 acres had been held for 5 years. If Mr. Jones sold the 200 acres of land that had been held only 5 years, any capital gain from the sale of this land would not be excludable since the land was part of the farming business but had been owned for less than 10 years. If the 300 acres of land that had been held for 15 years had been sold, the capital gain from that sale would qualify for exclusion.

EXAMPLE 4. John Pike owned a farming business for more than ten years. In this business, Mr. Pike farmed a neighbor's land on a crop-share basis throughout the period. Mr. Pike bought 80 acres of land in 1992 and farmed that land until the land was sold in 1998 for a capital gain of $20,000. The capital gain was taxable on Mr. Pike's Iowa return since the farmland had been held for less than ten years although the business had been operated by Mr. Pike for more than ten years.

EXAMPLE 5. Joe and John Perry were brothers in a partnership for six years which owned 80 acres of land. The brothers dissolved the partnership in 1993, formed an S corporation, and included the land in the assets of the S corporation. The land was sold in 1998 to Brian Perry, who was the grandson of John Perry. The Perry brothers realized a capital gain of $15,000 from the land sale which was divided equally between the brothers. Joe Perry was able to exclude the capital gain he had received from the sale as he had owned the land and had materially participated in the business for at least ten years at the time the land was sold. John Perry was unable to exclude the capital gain because although he had owned the land for ten years, he had not materially participated in the business for ten years when the land was sold. The fact that the land was sold to a lineal descendant of John Perry is not relevant because the sale involved only real property held in a business and not the sale of all, or substantially all, of the tangible personal property and intangible property of the business.

EXAMPLE 6. Todd Myers had a farming business which he had owned and which he had materially participated in for 20 years. There were two tracts of farmland in the farming business. In 1998, he sold one tract of farmland in the farming business that he had owned for more than 10 years for a $50,000 capital gain. The farmland was sold to a person who was not a lineal descendant. During the same year, Mr. Myers had $30,000 in long-term capital losses from sales of stock. In this situation, on Mr. Myers' 1998 Iowa return, the capital gains would not be applied against the capital losses. Because the capital losses are unrelated to the farming business, Mr. Myers does not have to reduce the Iowa capital gain deduction by the capital losses from the sales of stock.

EXAMPLE 7. Jim Casey had owned farmland in Greene County, Iowa, since 1987, and had materially participated in the farming business. In 1998, Mr. Casey entered into a like-kind exchange under Section 1031 of the Internal Revenue Code for farmland located in Carroll County, Iowa. Mr. Casey continued to materially participate in the farming business in Carroll County. The farmland in Carroll County was

sold in 2005, resulting in a capital gain. For federal tax purposes, the holding period for the capital gain starts in 1987 under Section 1223 of the Internal Revenue Code. Because Mr. Casey owned the farmland in Carroll County for less than ten years, based on Iowa law at the time of the sale, the capital gain from the sale does not qualify for the Iowa capital gain exclusion. The exclusion is not allowed even though the holding period for federal tax purposes is longer than ten years because the capital gain was reported for a tax year ending prior to January 1, 2006. If the farmland was sold in 2006, the gain would qualify for the capital gain exclusion since the capital gain would have been reported for a tax year ending on or after January 1, 2006.

EXAMPLE 8. Jane and Ralph Murphy, a married couple, owned farmland in Iowa since 1975. Ralph died in 1994 and, under his will, Jane acquired a life interest in the farm. The farmland was managed by their son, Joseph, after Ralph's death. Jane died in 1998, and Joseph continued to materially participate and manage the farm operation. Joseph sold the farmland in 2006 and reported a capital gain. For federal tax purposes, the holding period for the capital gain starts in 1994, when Ralph died, under Section 1223 of the Internal Revenue Code. Because the holding period for the capital gain was ten years or more under Section 1223 of the Internal Revenue Code, Joseph is entitled to the capital gain exclusion under Iowa law since he materially participated for ten years or more and the capital gain was reported for a tax year ending on or after January 1, 2006.

40.38(8) Net capital gains from the sale of assets of a business by an individual that had owned the business ten years and had materially participated in the business for ten years. Net capital gains from the sale of the assets of a business are excluded from an individual's net income to the extent the individual had owned the business for ten or more years and the individual had materially participated in the business for ten or more years. In addition to the ownership and material participation qualifications for the capital gain exclusion, the owner of the business must have sold substantially all of the tangible personal property or the service of the business in order for the capital gains to be excluded from taxation.

For purposes of this rule, the term "substantially all of the tangible property or service of the business" means that the sale of the assets of a business during the tax year must represent at least 90 percent of the fair market value of all of the tangible personal property and service of the business on the date of sale of the business assets. Thus, if the fair market value of a business's tangible personal property and service was $400,000, the business must sell tangible personal property and service of the business that had a fair market value of 90 percent of the total value of those assets to achieve the 90 percent or more standard. However, this does not mean that the amount raised from the sale of the assets must be $360,000 in order for the 90 percent standard to be met, only that the assets involved in the sale of the business must represent 90 percent of the total value of the business assets.

Note that if the 90 percent of assets test is met, capital gains from other assets of the business can also be excluded. Some of these assets include, but are not limited to, stock of another corporation, bonds, including municipal bonds, and interests in other businesses. Note also that if the 90 percent test has been met, all of the individual assets of the business do not have to have been held for ten years on the date of sale for the capital gains from the sale of these assets to be excluded in computing the taxpayer's net income. This statement is made with the assumption that the taxpayer has owned the business and materially participated in the business for ten years prior to the sale of the assets of the business.

In most instances, the sale of merchandise or inventory of a business will not result in capital gains for the seller of a business, so the proceeds from the sale of these items would not be excluded from taxation.

For the purposes of this rule, the term "service of the business" means intangible assets used in the business or for the production of business income which, if sold for a gain, would result in a capital gain for federal income tax purposes. Intangible assets that are used in the business or for the production of income include, but are not limited to, the following items: (1) goodwill, (2) going concern value, (3) information base, (4) patent, copyright, formula, design, or similar item, (5) client lists, and (6) any franchise, trademark, or trade name. The type of business that owns the intangible asset is immaterial, whether the business is a manufacturing business, retail business, or a service business, such as a law or accounting firm.

However, when the business owned by the taxpayer for a minimum of ten years is sold to an individual or individuals who are all lineal descendants of the taxpayer, the taxpayer does not need to have materially participated in the business for ten years prior to the sale of the business in order for the capital gain to be excluded in the computation of net income.

For purposes of these rules, the term "lineal descendant" means children of the taxpayer, including legally adopted children and biological children, stepchildren, grandchildren, great-grandchildren, and any other lineal descendants of the taxpayer.

In situations in which substantially all the tangible personal property or service was sold by a partnership, subchapter S corporation, limited liability company, estate, or trust and the capital gains from the sale of the assets flow through to the owners of the business entity for federal income tax purposes, the owners can exclude the capital gains from their net incomes if the owners had owned the business for ten or more years and the owners had materially participated in the business for ten years prior to the date of sale of the tangible personal property or service, irrespective of whether the type of business entity changed during the ten-year period prior to the sale.

Note that additional information on sales of business assets which may qualify for the exclusion and criteria for material participation in a business may be found in subrule 40.38(1).

Installments received in the tax year from installment sales of businesses are eligible for the exclusion if all relevant criteria were met at the time of the installment sale which would make the capital gains from the sale exempt from taxation if the installment sale of the business had occurred on or after January 1, 1998.

Sale of capital stock of an Iowa corporation or an Iowa farm corporation to a lineal descendant or to another individual does not constitute the sale of a business for purposes of the capital gain exclusion, whether the corporation is a C corporation or an S corporation.

Capital gains from the sale of an ownership interest in a partnership, limited liability company or other entity are not eligible for the capital gain exclusion.

Note that the sale of one activity of a business or one distinct part of a business may not constitute the sale of a business for purposes of this rule unless the activity or distinct part is a separate business entity such as a partnership or sole proprietorship which is owned by the "business" or unless it represents the sale of at least 90 percent of the fair market value of the tangible personal property or service of the business.

In order to determine whether the sale of the business assets constitutes the sale of a business for purposes of excluding capital gains recognized from the sale, refer to 701—subrule 54.2(1) relating to a unitary business. If activities or locations comprise a unitary business, then 90 percent or more of that unitary business must be sold to meet the requirement for capital gains from the sale to be excluded from taxation. If the activity or location constitutes a separate, distinct, non-unitary business, then 90 percent of the assets of that location or activity must be sold to qualify for the exemption of the capital gain. The burden of proof is on the taxpayer to show that a sale of assets of a business meets the 90 percent standard.

EXAMPLE 1. Joe Rich is the sole owner of Eagle Company, which is an S corporation. In 1998, Mr. Rich sold all the stock of Eagle Company to his son, Mark Rich, and recognized a $100,000 gain on the sale of the stock. This capital gain would be taxable on Joe Rich's 1998 Iowa return since the sale of stock of a corporation did not constitute the sale of the tangible personal property and service of a business.

EXAMPLE 2. Randall Insurance Agency, a sole proprietorship, is owned solely by Peter Randall. In 1998, Peter Randall received capital gains from the sale of all tangible assets of the insurance agency. In addition, Mr. Randall had capital gains from the sale of client lists and goodwill to the new owners of the business. Since Mr. Randall had owned the insurance agency for more than ten years and had materially participated in the insurance agency for more than ten years at the time of the sale of the tangible property and intangible property of the business, Mr. Randall can exclude the capital gains from the sale of the tangible assets and the intangible assets in computing net income on his 1998 Iowa return.

EXAMPLE 3. Joe Brown owned and materially participated in a sole proprietorship for more than ten years. During the 1998 tax year, Mr. Brown sold two delivery trucks and had capital gains from the sale

of the trucks. The trucks were valued at $30,000 at the time of sale which was about 10 percent of the tangible personal property of the business. Mr. Brown could not exclude the capital gains from the sale of the trucks on his 1998 Iowa return as the sale of those assets did not involve the sale of substantially all of the tangible personal property and service of Mr. Brown's business.

EXAMPLE 4. Rich Bennet owned a restaurant and a gift shop in the same building that were part of a sole proprietorship owned only by Mr. Bennet, who had owned and materially participated in both business activities for over ten years. Mr. Bennet sold the gift shop in 1998 for $100,000 and had a capital gain of $40,000 from the sale. The total fair market value of all tangible personal property and intangible assets in the proprietorship at the time the gift shop was sold was $250,000. Mr. Bennet could not exclude the capital gain on his 1998 Iowa return because he had not sold at least 90 percent of the tangible and intangible assets of the business.

EXAMPLE 5. Joe and Ray Johnson were partners in a farm partnership that they had owned for 12 years in 1998 when the assets of the partnership were sold to Ray's son Charles. Joe Johnson had materially participated in the partnership for the whole time that the business was in operation, so he could exclude the capital gain he had received from the sale of the partnership assets. Although Ray Johnson had not materially participated in the farm business, he could exclude the capital gain he received from the sale of the assets of the partnership because the sale of the partnership assets was to his son, a lineal descendant.

EXAMPLE 6. Kevin and Ron Barker owned a partnership which held a chain of six gas stations in an Iowa city. In 1998, the Barkers sold 100 percent of the property of two of the gas stations and received a capital gain from the sale of $30,000. Separate business records were kept for each of the gas stations. Since the partnership was considered to be a unitary business and the Barkers sold less than 90 percent of the fair market value of the business, the Barkers could not exclude the capital gain from the sale of the gas stations from the incomes reported on their 1998 Iowa returns. However, any gain from the sale of the real property may qualify for exclusion, assuming the ten-year ownership and material participation qualifications are met.

EXAMPLE 7. Rudy Stern owned a cafe in one Iowa city and a fast-food restaurant in another Iowa city. Mr. Stern had owned both businesses and had materially participated in the operation of both businesses for ten years. Each business was operated with a separate manager and kept separate business records. In 1998, Mr. Stern sold all the tangible and intangible assets associated with the cafe and received a capital gain from the sale of the cafe. Mr. Stern can exclude the capital gain from his net income for 1998 because the cafe and fast-food restaurant were considered to be separate and distinct non-unitary businesses.

EXAMPLE 8. Doug Jackson is a shareholder in an S corporation, Jackson Products Corporation. Mr. Jackson has a 75 percent ownership interest in the S corporation, and he has materially participated in the operations of the S corporation since its incorporation in 1980. In 2002, Mr. Jackson transfers 10 percent of his ownership interest in the S corporation to Doug Jackson Irrevocable Trust. The income from the irrevocable trust is reported on Mr. Jackson's individual income tax return. In 2005, the assets of Jackson Products Corporation are sold, resulting in a capital gain. Mr. Jackson can claim the capital gain deduction on both his 65 percent ownership held in his name and the 10 percent irrevocable trust ownership since the capital gain from the irrevocable trust flows through to Mr. Jackson's income tax return, and Mr. Jackson retained a 75 percent interest in the S corporation for more than ten years.

40.38(9) Net capital gains from the sales of cattle or horses held for two years and used for certain purposes. Net capital gains from the sales of certain cattle or horses held for 24 months or more before the sale and which were owned by taxpayers who received more than one-half of their gross incomes in the tax year from farming or ranching operations are excluded from taxation. The cattle or horses must have been held the required two-year period for breeding, dairy, or sporting purposes in order for the capital gain from the sale of the horses and cattle to qualify for exclusion. These are the same sales of horses and cattle that are eligible for capital gain treatment for federal income tax purposes under Section 1231 of the Internal Revenue Code.

In situations where the qualifying cattle or horses are sold by the taxpayer to a lineal descendant of the taxpayer, the taxpayer does not need to have had more than 50 percent of gross income in the tax year from farming or ranching activities in order for the capital gain to be excluded.

Capital gains from sales of qualifying cattle or horses by an S corporation, partnership, or limited liability company, where the capital gains flow through to the individual owners for federal income tax purposes are eligible for the exclusion only in situations in which the individual owners have more than 50 percent of their gross incomes in the tax year from farming or ranching activities, or where the sale of the qualifying cattle or horses was to lineal descendants of the owners reporting the capital gains from the sales of the qualifying cattle or horses.

However, capital gains from sales of qualifying cattle or horses by a C corporation are not eligible for the capital gain exclusion.

Information about whether cattle or horses were held for draft, breeding, dairy, or sporting purposes is described in detail in subrule 40.38(2). The same subrule includes criteria for determining if more than 50 percent of a taxpayer's gross income in a tax year was from farming or ranching. Note that this standard for determining a taxpayer's qualification for the capital gain deduction or exclusion is if the taxpayer's gross income from farming or ranching, not net income from those activities, is greater than 50 percent of the taxpayer's total gross income and not total net income.

EXAMPLE. Bob Deen had a cattle operation that held black angus cattle in the operation for breeding purposes. In 1998, Mr. Deen sold 40 head of cattle that had been held for breeding purposes for two years. Mr. Deen's total gross income from farming was $125,000, but he had a $10,000 loss from his farming operation. Mr. Deen also had wages of $25,000 from a job at a local farming cooperative. Because Mr. Deen had more than 50 percent of his gross income in 1998 from farming operations, he could exclude the capital gain from the sale of the breeding cattle. Although Mr. Deen had a loss from his farming activities, he still had more than 50 percent of his gross income in the tax year from those activities.

40.38(10) Net capital gains from sales of certain livestock other than horses and cattle. Net capital gains from sale of breeding livestock, other than cattle or horses held 12 or more months by taxpayers who have more than 50 percent of their gross incomes in the tax year from farming or ranching operations, are excluded from taxation. These are the same sales of breeding livestock other than cattle or horses that are eligible for capital gain treatment for federal income tax purposes under Section 1231 of the Internal Revenue Code. In an instance in which a taxpayer sells breeding livestock other than cattle or horses which have been held 12 or more months, and the sale of the livestock is to a lineal descendant of the taxpayer, the taxpayer does not need to have more than 50 percent of the gross income in the tax year from farming or ranching operations to be eligible for the capital gain exclusion.

Capital gains from sales of qualifying livestock other than cattle or horses by an S corporation, partnership, or limited liability company, where the capital gains flow through to the owners of the respective business entity for federal income tax purposes, qualify for the exclusion to the extent the owners receiving the capital gains meet the qualifications for the exclusion on the basis of having more than 50 percent of the gross income in the tax year from farming or ranching activities.

Capital gains from the sale of qualifying livestock other than cattle or horses by a C corporation are not eligible for the exclusion.

Animals that are considered livestock other than cattle or horses for purposes of this rule are listed in subrule 40.38(3). Criteria for determining whether more than 50 percent of a taxpayer's gross income in the tax year is from farming or ranching are defined in subrule 40.38(2).

40.38(11) Capital gains from the sales of timber held by the taxpayer more than one year. These sales of timber are sales that would qualify for capital gain treatment for federal income tax purposes under Section 1231 of the Internal Revenue Code. Thus, if the sale of timber products meets the criteria for capital gain treatment for federal income tax purposes, the capital gain will qualify for exclusion on the Iowa income tax return.

Subrule 40.38(4) includes information on which tree products are considered to be timber for purposes of this rule as well as which sales of timber qualify for the capital gain exclusion. Additional

information about gains and losses from the sale of timber products is found in Treasury Regulations §1.631-1 and §1.631-2.

Capital gains from the sale of qualifying timber by an S corporation, partnership, or limited liability company, which flow to the owners of the respective business entity for federal individual income tax purposes, are eligible for the capital gain exclusion.

Capital gains from the sale of timber by a C corporation do not qualify for the capital gain exclusion.

40.38(12) Capital gains from the liquidation of assets of corporations which are recognized as sales of assets for federal income tax purposes. Capital gains realized from liquidations of corporations which are recognized as sales of assets for federal income tax purposes under Section 331 of the Internal Revenue Code may be eligible for the capital gain exclusion. To the extent the capital gains are reported by the shareholders of the corporations for federal income tax purposes and the shareholders are individuals, the shareholders are eligible for the capital gain deduction if the shareholders meet the qualifications for time of ownership and time of material participation in the corporation being liquidated. The burden of proof is on the shareholders to show they meet these time of ownership and material participation requirements.

40.38(13) Capital gains from certain stock sales which are treated as acquisitions of assets of the corporation for federal income tax purposes. Capital gains received by individuals from a sale of stock of a target corporation which is treated as an acquisition of the assets of the corporation under Section 338 of the Internal Revenue Code may be excluded if the individuals receiving the capital gains had owned an interest in the target corporation and had materially participated in the corporation for ten years prior to the date of the sale of the corporation. Note that the burden of proof is on the taxpayer to show eligibility to exclude the capital gains from these transactions in the computation of net income for Iowa individual income tax purposes.

40.38(14) Net capital gain deduction or exclusion not allowed for purposes of computation of a net operating loss or for computation of income for a tax year to which a net operating loss is carried. Although the net capital gain deduction or exclusion in this rule is allowed for the purposes of computation of a taxpayer's net income for a tax year, the deduction or exclusion is not allowed for the purposes of the computation of a net operating loss in the tax year. In addition, if a net operating loss for a tax year beginning on or after January 1, 1998, is carried forward to a subsequent tax year or is carried back to a prior tax year, the net capital gain deduction or exclusion is not allowed for the purposes of computing the income for the tax year to which the net operating loss was carried.

This rule is intended to implement Iowa Code section 422.7.

701—40.39(422) Exemption of interest from bonds or notes issued to fund the E911 emergency telephone system. Interest received on or after May 4, 1990, from bonds or notes issued by the Iowa finance authority to fund the E911 emergency telephone system is exempt from the state income tax.

This rule is intended to implement Iowa Code sections 422.7 and 477B.20.

701—40.40(422) Exemption of active-duty military pay of national guard personnel and armed forces reserve personnel received for services related to operation desert shield. For tax years ending on or after August 2, 1990, military pay received by persons in the national guard and persons in the armed forces military reserve is exempt from state income tax to the extent the military pay is not otherwise excluded from taxation and the military pay is for active-duty military service on or after August 2, 1990, pursuant to military orders related to Operation Desert Shield. The exemption applies to individuals called to active duty in Iowa to replace other persons who were in military units who were called to serve on active duty outside Iowa provided the military orders specify that the active duty assignment in Iowa pertains to Operation Desert Shield.

Persons filing original returns or amended returns on Form IA 1040X for tax years where the exempt income was received should print the notation, "Operation Desert Shield" at the top of the original return form or amended return form. A copy of the military orders showing the person was called to active duty

and was called in support of Operation Desert Shield should be attached to the original return form or amended return form to support the exemption of the active duty military pay.

This rule is intended to implement Iowa Code section 422.7.

701—40.41(422) Disallowance of private club expenses. Rescinded IAB 11/24/04, effective 12/29/04.

701—40.42(422) Depreciation of speculative shell buildings.

40.42(1) For tax years beginning on or after January 1, 1992, speculative shell buildings constructed or reconstructed after that date may be depreciated as 15-year property under the accelerated cost recovery system of the Internal Revenue Code. If the taxpayer has deducted depreciation on the speculative shell building on the taxpayer's federal income tax return, that amount of depreciation must be added to the federal adjusted gross income in order to deduct depreciation computed under this rule.

40.42(2) On sale or other disposition of the speculative building, the taxpayer must report on the taxpayer's Iowa individual income tax return the same gain or loss as is reported on the taxpayer's federal individual income tax return. If, while owned by the taxpayer, the building is converted from a speculative shell building to another use, the taxpayer must deduct the same amount of depreciation on the taxpayer's Iowa tax return as is deducted on the taxpayer's federal tax return.

40.42(3) For the purposes of this rule, the term "speculative shell building" means a building as defined in Iowa Code section 427.1(27)*"c."*

This rule is intended to implement Iowa Code section 422.7.

701—40.43(422) Retroactive exemption for payments received for providing unskilled in-home health care services to a relative. Retroactive to January 1, 1988, for tax years beginning on or after that date, supplemental assistance payments authorized under Iowa Code section 249.3(2)*"a"*(2) which are received by an individual providing unskilled in-home health care services to a member of the caregiver's family are exempt from state income tax to the extent that the individual caregiver is not a licensed health care professional designated in Iowa Code section 147.13, subsections 1 to 10.

For purposes of this exemption, a member of the caregiver's family includes a spouse, parent, stepparent, child, stepchild, brother, stepbrother, sister, stepsister, lineal ancestor such as grandparent and great-grandparent, and lineal descendant such as grandchild and great-grandchild, and those previously described relatives that are related by marriage or adoption. Those licensed health care professionals that are not eligible for this exemption include medical doctors, doctors of osteopathy, physician assistants, psychologists, podiatrists, chiropractors, physical therapists, occupational therapists, nurses, dentists, dental hygienists, optometrists, speech pathologists, and audiologists.

Taxpayers who paid state income tax on the supplemental assistance payments on individual income tax returns for tax years beginning in the 1988 calendar year and who are eligible for the exemption may claim refunds of state income tax paid on the assistance payments, if the refund claims are filed with the department of revenue on or before April 30, 1993.

This rule is intended to implement Iowa Code section 422.7.

701—40.44(422,541A) Individual development accounts. Individual development accounts are authorized for low-income taxpayers for tax years beginning on or after January 1, 1994. Additions to the accounts are described in the following subrule:

40.44(1) *Exemption of additions to individual development accounts.* The following additions to individual development accounts are exempt from the state income tax of the owners of the accounts to the extent the additions were subject to federal income tax:

a. The amount of contributions made in the tax year to an account by persons and entities other than the owner of the account.

b. The amount of any savings refund or state match payments made in the tax year to an account as authorized for contributions made to the accounts by the owner of the account.

c. Earnings on the account in the tax year or interest earned on the account.

40.44(2) *Additions to net income for withdrawals from individual development accounts.* Rescinded IAB 9/11/96, effective 10/16/96.

This rule is intended to implement Iowa Code sections 422.7, 541A.2 and 541A.3 as amended by 2008 Iowa Acts, Senate File 2430.

701—40.45(422) Exemption for distributions from pensions, annuities, individual retirement accounts, or deferred compensation plans received by nonresidents of Iowa. For tax years beginning on or after January 1, 1994, a distribution from a pension plan, annuity, individual retirement account, or deferred compensation plan which is received by a nonresident of Iowa is exempt from Iowa income tax to the extent the distribution is directly related to the documented retirement of the pensioner, annuitant, owner of individual retirement account, or participant in a deferred compensation arrangement. For tax years beginning on or after January 1, 1996, distributions of nonqualified retirement benefits which are paid by a partnership to its retired partners and which are received by a nonresident of Iowa are exempt from Iowa income tax to the extent the distribution is directly related to the documented retirement of the partner. In a situation where the pensioner, annuitant, owner of the individual retirement account, or participant of a deferred compensation arrangement dies before the date of documented retirement, any distribution from the pension, annuity, individual retirement account, or deferred compensation arrangement will not be taxable to the beneficiary receiving the distributions if the beneficiary is a nonresident of Iowa. If the pensioner, annuitant, owner of the individual retirement account, or participant of a deferred compensation arrangement dies after the date of documented retirement, any distributions from the pension, annuity, individual retirement account, or deferred compensation arrangement will not be taxable to a beneficiary receiving distributions if the beneficiary is a nonresident of Iowa.

For purposes of this rule, the distributions from the pensions, annuities and deferred compensation arrangements were from pensions, annuities, and deferred compensation earned entirely or at least partially from employment or self-employment in Iowa. For purposes of this rule, distributions from individual retirement arrangements were from individual retirement arrangements that were funded by contributions from the arrangements that were deductible or partially deductible on the Iowa income tax return of the owner of the individual retirement accounts.

The following subrules include definitions and examples which clarify when distributions from pensions, annuities, individual retirement accounts, and deferred compensation arrangements are exempt from Iowa income tax, when the distributions are received by nonresidents of Iowa:

40.45(1) *Definitions.*

a. The word "beneficiary" means an individual who receives a distribution from a pension or annuity plan, individual retirement arrangement, or deferred compensation plan as a result of either the death or divorce of the pensioner, annuitant, participant of a deferred compensation arrangement, or owner of an individual retirement account.

b. The term "individual's documented retirement" means any evidence that the individual can provide to the department of revenue which would establish that the individual or the individual's beneficiary is receiving distributions from the pension, annuity, individual retirement account, or the deferred compensation arrangement due to the retirement of the individual.

Examples of documents that would establish an individual's retirement may include: copies of birth certificates or driver's licenses to establish an individual's age; copies of excerpts from an employer's personnel manual or letter from employer to establish retirement or early retirement policies; a copy of a statement from a physician to establish an individual's disability which could have contributed to a person's retirement.

c. The term "nonresident" applies only to individuals and includes all individuals other than those individuals domiciled in Iowa and those individuals who maintain a permanent place of abode in Iowa. See 701—subrule 38.17(2) for the definition of domicile.

40.45(2) *Examples:*

a. John Jones had worked for the same Iowa employer for 32 years when he retired at age 62 and moved to Arkansas in March of 1994. Mr. Jones started receiving distributions from the pension plan

from his former employer starting in May 1994. Because Mr. Jones was able to establish that he was receiving the distributions from the pension plan due to his retirement from his employment, Mr. Jones was not subject to Iowa income tax on the distributions from the pension plan. Note that Mr. Jones had sold his Iowa residence in March and established his domicile in Arkansas at the time of his move to Arkansas.

b. Wanda Smith was the daughter of John Smith who died in February 1994 after 25 years of employment with a company in Urbandale, Iowa. Wanda Smith was the sole beneficiary of John and started receiving distributions from John's pension in April 1994. Wanda Smith was a bona fide resident of Oakland, California, when she received distributions from her father's pension. Wanda was not subject to Iowa income tax on the distributions since she was a nonresident of Iowa at the time the distributions were received.

c. Martha Graham was 55 years old when she quit her job with a firm in Des Moines to take a similar position with a firm in Dallas, Texas. Ms. Graham had worked for the Des Moines business for 22 years before she resigned from the job in May 1994. Starting in July 1994, Ms. Graham received monthly distributions from the pension from her former Iowa employer. Although Ms. Graham was a nonresident of Iowa, she was subject to Iowa income tax on the pension distribution since the taxpayer didn't have a documented retirement.

d. William Moore was 58 years old when he quit his job with a bank in Mason City in February 1994 after 30 years of employment with the bank. By the time Mr. Moore started receiving pension payments from his employment with the bank, he had moved permanently to New Mexico. Shortly after he arrived in New Mexico, Mr. Moore secured part-time employment. The pension payments were not taxable to Iowa as Mr. Moore was retired notwithstanding his part-time employment in New Mexico.

e. Joe Brown had worked for an Iowa employer for 25 years when he retired in June 1992 at the age of 65. Mr. Brown started receiving monthly pension payments in July 1992. Mr. Brown resided in Iowa until August 1994, when he moved permanently to Nevada to be near his daughter. Mr. Brown was not taxable to Iowa on the pension payments he received after his move to Nevada. Mr. Brown's retirement occurred in June 1992 when he resigned from full-time employment.

This rule is intended to implement Iowa Code section 422.8.

701—40.46(422) Taxation of compensation of nonresident members of professional athletic teams. Effective for tax years beginning on or after January 1, 1995, the Iowa source income of a nonresident individual who is a member of a professional athletic team includes the portion of the individual's total compensation for services provided for the athletic team that is in the ratio that the number of duty days spent in Iowa rendering services for the team during the tax year bears to the total number of duty days spent both within and without Iowa in the tax year. Thus, if a nonresident member of a professional athletic team has $50,000 in total compensation from the team in 1995 and the athlete has 20 Iowa duty days and 180 total duty days for the team in 1995, $5,556 of the compensation would be taxable to Iowa ($50,000 × 20/180 = $5,556).

The following subrules include definitions, examples, and other information which clarify Iowa's taxation of nonresident members of professional athletic teams:

40.46(1) *Definitions.*

a. The term "professional athletic team" includes, but is not limited to, any professional baseball, basketball, football, soccer, or hockey team.

b. The term "member of a professional athletic team" includes those employees who are active players, players on the disabled list, and any other persons required to travel and who travel with and perform services on behalf of a professional athletic team on a regular basis. This includes, but is not limited to, coaches, managers, and trainers.

c. The term "total compensation for services rendered as a member of a professional athletic team" means the total compensation received during the taxable year for services rendered. "Total compensation" includes, but is not limited to, salaries, wages, bonuses (as described in subparagraph (1) of this paragraph), and any other type of compensation paid during the taxable year to a member of a professional athletic team for services performed in that year. Such compensation does not include

strike benefits, severance pay, termination pay, contract or option year buy-out payments, expansion or relocation payments, and any other payments not related to services rendered for the team.

For purposes of this paragraph, "bonuses" included in "total compensation for services rendered as a member of a professional athletic team" subject to the allocation described in this rule are:

(1) Bonuses earned as a result of play (i.e., performance bonuses) during the season, including bonuses paid for championship, playoff, or "bowl" games played by a team, or for the member's selection to all-star, league, or other honorary positions; and

(2) Bonuses paid for signing a contract, unless all of the following conditions are met:

1. The payment of the signing bonus is not conditional upon the signee playing any games for the team, or performing any subsequent services for the team, or even making the team;

2. The signing bonus is payable separately from the salary and any other compensation; and

3. The signing bonus is nonrefundable.

d. Except as provided in subparagraphs (4) and (5) of this paragraph, the term "duty days" means all days during the taxable year from the beginning of the professional athletic team's official preseason training period through the last game in which the team competes or is scheduled to compete. Duty days are included in the allocation described in this rule for the tax year in which they occur, including where a team's official preseason training period through the last game in which the team competes, or is scheduled to compete, occurs during more than one tax year.

(1) Duty days also includes days on which a member of a professional athletic team renders a service for a team on a date which does not fall within the previously mentioned period (e.g., participation in instructional leagues, the "Pro Bowl" or promotional "caravans"). Rendering a service includes conducting training and rehabilitation activities, but only if conducted at the facilities of the team.

(2) Included within duty days are game days, practice days, days spent at team meetings, promotional caravans and preseason training camps, and days served with the team through all postseason games in which the team competes or is scheduled to compete.

(3) Duty days for any person who joins a team during the period from the beginning of the professional athletic team's official preseason training period through the last game in which the team competes, or is scheduled to compete, begins on the day the person joins the team. Conversely, duty days for any person who leaves a team during such period ends on the day the person leaves the team. When a person switches teams during a taxable year, separate duty day calculations are to be made for the period the person was with each team.

(4) Days for which a member of a professional athletic team is not compensated and is not rendering services for the team in any manner, including days when the member of a professional athletic team has been suspended without pay and prohibited from performing any services for the team, are not to be treated as duty days.

(5) Days for which a member of a professional athletic team is on the disabled list and does not conduct rehabilitation activities at facilities of the team and is not otherwise rendering services for the team in Iowa, are not to be considered duty days spent in Iowa. However, all days on the disability list are considered to be included in total duty days spent both within and outside the state of Iowa.

(6) Total duty days for members of a professional athletic team that are not professional athletes are the number of days in the year that the members are employed by the professional athletic team. Thus, in the case of a coach of a professional athletic team who was coach for the entire year of 1995, the coach's total duty days for 1995 would be 365.

(7) Travel days in Iowa by a team member that do not involve a game, practice, team meeting, all-star game, or other personal service for the team are not considered to be duty days in Iowa. However, to the extent these days fall within the period from the team's preseason training period through the team's final game, these Iowa travel days will be considered in the total duty days spent within and outside Iowa, for team members who are professional athletes.

(8) Duty days in Iowa do not include days a team member performs personal services for the professional athletic team in Iowa on those days that the team member is a bona fide resident of a state with which Iowa has a reciprocal tax agreement. See rule 701—38.13(422).

40.46(2) *Filing composite Iowa returns for nonresident members of professional athletic teams.* Professional athletic teams may file composite Iowa returns on behalf of team members who are nonresidents of Iowa and who have compensation that is taxable to Iowa from duty days in Iowa for the athletic team. However, the athletic team may include on the composite return only those team members who are nonresidents of Iowa and who have no Iowa source incomes other than the incomes from duty days in Iowa for the team. The athletic team may exclude from the composite return any team member who is a nonresident of Iowa and whose income from duty days in Iowa is less than $1,000. See rule 701—48.1(422) about filing Iowa composite returns.

40.46(3) *Examples of taxation of nonresident members of professional athletic teams.*

a. Player A, a member of a professional athletic team, is a nonresident of Iowa. Player A's contract for the team requires A to report to such team's training camp and to participate in all exhibition, regular season, and playoff games. Player A has a contract which covers seasons that occur during year 1/year 2 and year 2/year 3. Player A's contract provides that A is to receive $500,000 for the year 1/year 2 season and $600,000 for the year 2/year 3 season. Assuming player A receives $550,000 from the contract during taxable year 2 ($250,000 for one-half the year 1/year 2 season and $300,000 for one-half the year 2/year 3 season), the portion of compensation received by player A for taxable year 2, attributable to Iowa, is determined by multiplying the compensation player A receives during the taxable year ($550,000) by a fraction, the numerator of which is the total number of duty days player A spends rendering services for the team in Iowa during taxable year 2 (attributable to both the year 1/year 2 season and the year 2/year 3 season) and the denominator of which is the total number of player A's duty days spent both within and outside Iowa for the entire taxable year.

b. Player B, a member of a professional athletic team, is a nonresident of Iowa. During the season, B is injured and is unable to render services for B's team. While B is undergoing medical treatment at a clinic, which is not a facility of the team, but is located in Iowa, B's team travels to Iowa for a game. The number of days B's team spends in Iowa for practice, games, meetings, for example, while B is present at the clinic, are not to be considered duty days spent in Iowa for player B for that taxable year for purposes of this rule, but these days are considered to be included within total duty days spent both within and outside Iowa.

c. Player C, a member of a professional athletic team, is a nonresident of Iowa. During the season, C is injured and is unable to render services for C's team. C performs rehabilitation exercises at the facilities of C's team in Iowa as well as at personal facilities in Iowa. The days C performs rehabilitation exercise in the facilities of C's team are considered duty days spent in Iowa for player C for that taxable year for purposes of this rule. However, days player C spends at personal facilities in Iowa are not to be considered duty days spent in Iowa for player C for that taxable year for purposes of this rule, but the days are considered to be included within total duty days spent both within and outside Iowa.

d. Player D, a member of a professional athletic team, is a nonresident of Iowa. During the season, D travels to Iowa to participate in the annual all-star game as a representative of D's team. The number of days D spends in Iowa for practice, the game, meetings, for example, are considered to be duty days spent in Iowa for player D for that taxable year for purposes of this rule, as well as included within total duty days spent both within and outside Iowa.

e. Assume the same facts as given in paragraph *"d,"* except that player D is not participating in the all-star game and is not rendering services for D's team in any manner. Player D is instead traveling to and attending this game solely as a spectator. The number of days player D spends in Iowa for the game is not to be considered to be duty days spent in Iowa for purposes of this rule. However, the days are considered to be included within total duty days spent both within and outside Iowa.

40.46(4) *Use of an alternative method to compute taxable portion of a nonresident's compensation as a member of a professional athletic team.* If a nonresident member of a professional athletic team believes that the method provided in this rule for allocation of the member's compensation to Iowa is not equitable, the nonresident member may propose the use of an alternative method for the allocation of the compensation to Iowa. The request for an alternative method for allocation must be filed no later than 60 days before the due date of the return, considering that the due date may be extended for up to

6 months after the original due date if at least 90 percent of the tax liability was paid by the original due date (April 30 for taxpayers filing on a calendar-year basis).

The request for an alternative method should be filed with the Policy Section, Compliance Division, P.O. Box 10457, Des Moines, Iowa 50306. The request must set forth the alternative method for allocation to Iowa of the compensation of the nonresident professional team member. In addition, the request must specify, in detail, why the method for allocation of the compensation set forth in this rule is not equitable, as well as why the alternative method for allocation of the compensation is more equitable than the method provided in this rule. The burden of proof is on the nonresident professional team member to show that the alternative method is more equitable than the method provided in the rule.

If the department determines that the alternative method is more reasonable for allocation of the taxable portion of the team member's compensation than the method provided in this rule, the team member can use the alternative method on the current return and on subsequent returns.

If the department rejects the team member's use of the alternative method, the team member may file a protest within 60 days of the date of the department's letter of rejection. The nonresident team member's protest of the department's rejection of the alternate formula must be made in accordance with rule 701—7.41(17A) and must state, in detail, why the method provided in this rule is not equitable, as well as why the alternative method for allocation of the compensation is more equitable than the method set forth in this rule.

This rule is intended to implement Iowa Code sections 422.3, 422.7, and 422.8.

701—40.47(422) Partial exclusion of pensions and other retirement benefits for disabled individuals, individuals who are 55 years of age or older, surviving spouses, and survivors. For tax years beginning on or after January 1, 1995, an individual who is disabled, is 55 years of age or older, is a surviving spouse, or is a survivor with an insurable interest in an individual who would have qualified for the exclusion is eligible for a partial exclusion of retirement benefits received in the tax year. For tax years beginning on or after January 1, 2001, the partial exclusion of retirement benefits received in the tax year is increased up to a maximum of $6,000 for a person other than a husband or wife who files a separate state return and up to a maximum of $12,000 for a husband and wife who file a joint Iowa return. For tax years beginning on or after January 1, 1998, the partial exclusion of retirement benefits received in the tax year was increased up to a maximum of $5,000 for a person, other than a husband or wife who files a separate state income tax return, and up to a maximum of $10,000 for a husband and wife who file a joint state income tax return. A husband and wife filing separate state income tax returns or separately on a combined state return are allowed a combined exclusion of retirement benefits of up to a maximum of $10,000 for tax years beginning in 1998, 1999 and 2000 and a combined exclusion of up to a maximum of $12,000 for tax years beginning on or after January 1, 2001. The $10,000 or $12,000 exclusion may be allocated to the husband and wife in the proportion that each spouse's respective pension and retirement benefits received bear to the total combined pension and retirement benefits received by both spouses.

EXAMPLE 1. A married couple elected to file separately on the combined return form. Both spouses were 55 years of age or older. The wife received $95,000 in retirement benefits and the husband received $5,000 in retirement benefits. Since the wife received 95 percent of the retirement benefits, she would be entitled to 95 percent of the $10,000 retirement income exclusion or a retirement income exclusion of $9,500. The husband would be entitled to 5 percent of the $10,000 retirement income exclusion or an exclusion of $500.

EXAMPLE 2. A married couple elected to file separately on the combined return form. Both spouses were 55 years of age or older. The husband had $15,000 in retirement benefits from a pension. The wife received no retirement benefits. In this situation, the husband can use the entire $10,000 retirement income exclusion to exclude $10,000 of his pension benefits since the spouse did not use any of the $10,000 retirement income exclusion for the tax year.

For tax years beginning on or after January 1, 1995, but prior to January 1, 1998, the retirement income exclusion was up to $3,000 for single individuals, up to $3,000 for each married person filing a separate Iowa return, up to $3,000 for each married person filing separately on the combined return

form, and up to $6,000 for married taxpayers filing joint Iowa returns. For example, a married couple elected to file separately on the combined return form and both spouses were 55 years of age or older. One spouse had $2,000 in pension income that could be excluded, since the pension income was $3,000 or less. The other spouse had $6,000 in pension income and could exclude $3,000 of that income due to the retirement income exclusion. This second spouse could not exclude an additional $1,000 of the up to $3,000 retirement income exclusion that was not used by the other spouse.

"Insurable interest" is a term used in life insurance which also applies to this rule and is defined to be "such an interest in the life of the person insured, arising from the relations of the party obtaining the insurance, either as credit of or surety for the assured, or from the ties of blood or marriage to him, as would justify a reasonable expectation of advantage or benefit from the continuance of his life." *Warnock v. Davis,* 104 U.S. 775, 779, 26 L.Ed. 924; *Connecticut Mut. Life Ins. Co. v. Luchs,* 2 S.Ct. 949, 952, 108 U.S. 498, 27 L.Ed. 800; Appeal of Corson, 6 A. 213, 215, 113 Pa. 438, 57 Am. Rep. 479; *Adams' Adm'r v. Reed,* Ky., 36 S.W. 568, 570; *Trinity College v. Travelers' Co.,* 18 S.E. 175, 176, 113 N.C. 244, 22 L.R.A. 291; *Opitz v. Karel,* 95 N.W. 948, 951, 118 Wis. 527, 62 L.R.A. 982. It is not necessary that the expectation of advantage or profit should always be capable of pecuniary estimation, for a parent has an insurable interest in the life of his child, and a child in the life of his parent, a husband in the life of his wife, and a wife in the life of her husband. The natural affection in cases of this kind is considered as more powerful, as operating the more efficaciously, to protect the life of the insured than any other consideration, but in all cases there must be a reasonable ground, founded on relations to each other, either pecuniary or of blood or affinity, to expect some benefit or advantage from the continuance of the life of the assured. *Warnock v. Davis,* 104 U.S. 775, 26 L.Ed. 924; Appeal of Corson, 6 A. 213, 215, 113 Pa. 438, 57 Am. Rep. 479; *Connecticut Mut. Life Ins. Co. v. Luchs,* 2 S.Ct. 949, 952, 108 U.S. 498, 27 L.Ed. 800.

For purposes of this rule, the term "insurable interest" will be considered to apply to a beneficiary receiving retirement benefits due to the death of a pensioner or annuitant under the same circumstances as if the beneficiary were receiving life insurance benefits as a result of the death of the pensioner or annuitant.

For purposes of this rule, the term "survivor" is a person other than the surviving spouse of an annuitant or pensioner who is receiving the annuity or pension benefits because the person was a beneficiary of the pensioner or annuitant at the time of death of the pensioner or annuitant. In addition, in order for this person to qualify for the partial exclusion of pensions or retirement benefits, this survivor must have had an insurable interest in the pensioner or annuitant at the time of death of the annuitant or pensioner.

A survivor other than the surviving spouse will be considered to have an insurable interest in the pensioner or annuitant if the survivor is a son, daughter, mother, or father of the annuitant or pensioner. The relationship of these individuals to the pensioner or annuitant is considered to be so close that no separate pecuniary or monetary interest between the pensioner or annuitant and any of these relatives must be established.

A survivor may include relatives of the pensioner or annuitant other than those relatives that were mentioned above. However, before any of these relatives can be considered to be a survivor for purposes of this rule, the relative must have had some pecuniary interest in the continuation of the life of the pensioner or annuitant. That is, the relative must establish a relationship with the pensioner or annuitant that shows there was a reasonable expectation of an advantage or benefit which the person would have received with the continuance of the life of the pensioner or annuitant.

The fact that a niece of the pensioner or annuitant was named beneficiary of an uncle's pension where the uncle had no closer relatives does not in itself establish that the niece had an insurable interest in the pension benefits, if the niece was not receiving monetary benefits or the niece did not have some special relationship to the uncle at the time of the uncle's death.

If a grandson was receiving college tuition regularly from his grandfather and received the grandfather's pension as a beneficiary of the grandfather after the grandfather's death, the grandson would be deemed to have an insurable interest in the benefits and would be eligible for the partial retirement benefit exclusion.

A person who is not related to the pensioner or annuitant, such as a partner in a business or a creditor, may have an insurable interest in the pensioner or annuitant. However, the burden of proof is on a nonrelated person to show that the person had an insurable interest in the pensioner or the annuitant at the time of death of the pensioner or annuitant.

There are numerous court cases which deal with whether a person had established an insurable interest in the life of an individual that was insured. These cases may be used as a guideline to determine whether or not a person receiving a pension or annuity due to the death of an annuitant or pensioner had an insurable interest in the annuitant or pensioner at the time of death of the pensioner or annuitant. Thus, if a person would have met criteria for an insurable interest for purposes of an interest in a person's life insurance policy, the person would also be considered to be qualified for an insurable interest in a pensioner or annuitant.

Retirement benefits subject to the retirement income exclusion include, but are not limited to: benefits from defined benefit or defined contribution pension and annuity plans, benefits from annuities, incomes from individual retirement accounts, benefits from pension or annuity plans contributed by an employer or maintained or contributed by a self-employed person and benefits and earnings from deferred compensation plans. However, the exclusion does not apply to social security benefits. A surviving spouse who is not disabled or is not 55 years of age or older can only exclude retirement benefits received as a result of the death of the other spouse and on the basis that the deceased spouse would have been eligible for the exclusion in the tax year. In order for a survivor other than the surviving spouse to qualify for the partial exclusion of retirement benefits, the survivor must have received the retirement benefits as a result of the death of a pensioner or annuitant who would have qualified for the exclusion in the tax year on the basis of age or disability. In addition, the survivor other than the surviving spouse would have had to have an insurable interest in the pensioner or annuitant at the time of the death of the pensioner or annuitant.

For purposes of this rule, a disabled individual is a person who is receiving benefits as a result of retirement from employment or self-employment due to disability. In addition, a person is considered to be a disabled individual if the individual is determined to be disabled in accordance with criteria established by the Social Security Administration or other federal or state governmental agency.

Note that the pension or other retirement benefits that are excluded from taxation for certain individuals are to be considered as a part of net income for purposes of determining whether or not a particular individual's income is low enough to exempt that taxpayer from tax. In addition, the pension or other retirement benefits that are excluded from taxation for certain individuals are to be considered as a part of net income for the alternative tax computation, which is available to all taxpayers except those taxpayers filing as single individuals.

Finally, the pension or other retirement benefits are to be considered as a part of net income for individuals using the single filing status whose tax liabilities are limited so the liabilities cannot reduce the person's net income plus exempt benefits below $9,000, or below $18,000 for taxpayers 65 years of age or older for the 2007 and 2008 tax years, or below $24,000 for taxpayers 65 years of age or older for the 2009 and subsequent tax years.

This rule is intended to implement Iowa Code sections 422.5 and 422.7.

701—40.48(422) Health insurance premiums deduction. For tax years beginning on or after January 1, 1996, the amounts paid by a taxpayer for health insurance for the taxpayer, the taxpayer's spouse, and the taxpayer's dependents are deductible in computing net income on the Iowa return to the extent the amounts paid were not otherwise deductible in computing adjusted gross income. However, amounts paid by a taxpayer for health insurance on a pretax basis whereby the portion of the wages of the taxpayer used to pay health insurance premiums is not included in the taxpayer's gross wages for income tax or social security tax purposes are not deductible on the Iowa return.

In situations where married taxpayers pay health insurance premiums from a joint checking or other joint account and the taxpayers are filing separate state returns or separately on the combined return form, the taxpayers must allocate the deduction between the spouses on the basis of the net income of

each spouse to the combined net income unless one spouse can show that only that spouse's income was deposited to the joint account.

In circumstances where a taxpayer is self-employed and takes a deduction on the 1996 federal return for 30 percent of the premiums paid for health insurance on the federal return, the taxpayer would be allowed a deduction on the Iowa return for the portion of the health insurance premiums that was not deducted on the taxpayer's federal return, including any health insurance premiums deducted as an itemized medical deduction under Section 213 of the Internal Revenue Code.

For purposes of the state deduction for health insurance premiums, the same premiums for the same health insurance or medical insurance coverage qualify for this deduction as would qualify for the federal medical expense deduction. Thus, premiums paid for contact lens insurance qualify for the health insurance deduction. Also eligible for the deduction for tax years beginning in the 1996 calendar year are premiums paid by a taxpayer before the age of 65 for medical care insurance effective after the age of 65, if the premiums are payable (on a level payment basis) for a period of ten years or more or until the year the taxpayer attains the age of 65 (but in no case for a period of less than five years). For tax years beginning on or after January 1, 1997, premiums for long-term health insurance for nursing home coverage are eligible for this deduction to the extent the premiums for long-term health care services are eligible for the federal itemized deduction for medical and dental expenses, irrespective of the limitations set forth in Section 213(d)(10) of the Internal Revenue Code. For example, a 55-year-old taxpayer who paid $1,050 in premiums for long-term health insurance for nursing home coverage for the 2004 tax year would be allowed a deduction for Iowa purposes for the entire $1,050, even though the limitation for the federal itemized deduction for medical expenses in Section 213(d)(10) of the Internal Revenue Code for these premiums for this taxpayer is $980.

Amounts paid under an insurance contract for other than medical care (such as payment for loss of limb or life or sight) are not deductible, unless the medical charge is stated separately in the contract or provided in a separate statement.

This rule is intended to implement Iowa Code section 422.7 as amended by 1997 Iowa Acts, Senate File 129.

701—40.49(422) Employer social security credit for tips. Employers in the food and beverage industry are allowed a credit under Section 45B of the Internal Revenue Code for a portion of the social security taxes paid or incurred after 1993 on employee tips. The credit is equal to the employer's FICA obligation attributable to tips received which exceed tips treated as wages for purposes of satisfying minimum wage standards of the Fair Labor Standards Act. The credit is allowed only for tips received by an employee in the course of employment from customers on the premises of a business for which the tipping of employees serving food or beverages is customary. To the extent that an employer takes the credit for a portion of the social security taxes paid or incurred, the employer's deduction for the social security tax is reduced accordingly. For Iowa income tax purposes, the full deduction for the social security tax paid or incurred is allowed for tax years beginning on or after January 1, 1994.

This rule is intended to implement Iowa Code Supplement section 422.7.

701—40.50(422) Computing state taxable amounts of pension benefits from state pension plans. For tax years beginning on or after January 1, 1995, a retired member of a state pension plan, or a beneficiary of a member, who receives benefits from the plan where there was a greater contribution to the plan for the member for state income tax purposes than for federal income tax purposes can report less taxable income from the benefits on the Iowa individual income tax return than was reported on the federal return for the same tax year. This rule applies only to a member of a state pension plan, or the beneficiary of a member, who received benefits from the plan sometime after January 1, 1995, and only in circumstances where the member received wages from public employment in 1995, 1996, 1997, or 1998, or possibly in 1999 for certain teachers covered by the state pension plan authorized in Iowa Code chapter 294 so the member had greater contributions to the state pension plan for state income tax purposes than for federal income tax purposes. Starting with wages paid on or after January 1, 1999, to employees covered by a state pension plan other than teachers covered by the state pension

plan authorized in Iowa Code chapter 294, contributions made to the pension plan will be made on a pretax basis for state income tax purposes as well as for federal income tax purposes. However, in the case of teachers covered by the state pension plan authorized in Iowa Code chapter 294, contributions to the pension plan on behalf of these teachers on a pretax basis for state income tax purposes may start after January 1, 1999.

For example, in the case of a state employee who was covered by IPERS and had wages from covered public employment of $41,000 or more in 1995, that person would have made posttax contributions to IPERS of $1,517 for state income tax purposes for 1995 and zero posttax contributions to IPERS for federal income tax purposes for 1995. The $1,517 in contributions to IPERS for federal income tax purposes was made on a pretax basis and was considered to have been made by the employee's employer or the state of Iowa and not the employee. At the time this employee receives retirement benefits from IPERS, the retired employee will be subject to federal income tax on the portion of the benefits that is attributable to the $1,517 IPERS contribution made in 1995. However, this employee will not be subject to state income tax on the portion of the IPERS benefits received which is attributable to the $1,517 contribution to IPERS for 1995.

This rule does not apply to members or beneficiaries of members who elect to take a lump sum distribution of benefits from a state pension plan in lieu of receiving monthly payments of benefits from the plan.

The following subrules further clarify how the portion of certain state pension benefits that is taxable for state individual income tax purposes for tax years beginning on or after January 1, 1995, is determined.

40.50(1) *Definitions related to state taxation of benefits from state pension plan.* The following definitions clarify those terms and phrases that have a bearing on the state's taxation of certain individuals who receive retirement benefits from state pension plans:

a. For purposes of this rule, the terms "state pension," "state pensions," and "state pension plans" mean only those pensions and those pension plans authorized in Iowa Code chapter 97A for public safety peace officers, chapter 97B for Iowa public employees (IPERS), chapter 294 for certain teachers, and chapter 411 for police officers and firefighters. There are other pension plans available for some public employees in the state which may be described as "state pensions" or "state pension plans" in other contexts or situations, but these pension plans are not covered by this rule. An example of a pension plan that is not a "state pension plan" for purposes of this rule is the judicial retirement system for state judges authorized in Iowa Code section 602.9101.

b. For purposes of this rule, "member" is an individual who was employed in public service covered by a state pension plan and is either receiving or was receiving benefits from the pension plan.

c. For purposes of this rule, "beneficiary" is a person who has received or is receiving benefits from a state pension plan due to the death of an individual or member who earned benefits in a state pension plan.

d. For purposes of this rule, the term "IPERS" means the Iowa public employees retirement system.

e. For purposes of this rule, the term "pretax," when the term is applied to a contribution made to a state pension plan during a year from a public employee's compensation, means a contribution to a state pension plan that is not taxed on the employee's income tax return for the tax year in which the contribution is made. The contribution is considered to have been made by the state or the employee's employer and not by the employee so this contribution is not part of the employee's basis in the pension that is not taxed when the pension is received.

f. For purposes of this rule, the term "posttax," when the term is applied to a contribution made to a state pension plan during a year from a public employee's compensation, means the contribution is included in the employee's taxable income for the tax year of the contribution and the contribution is considered to have been made by the employee. That is, the contribution is part of the employee's basis in the pension which is not taxed at the time the pension is received.

40.50(2) *Computation of the taxable amount of the state pension for federal income tax purposes.* An individual who receives benefits in the tax year from one of the state pension plans is not subject to federal

income tax on the benefits to the extent of the pensioner's or member's recovery of posttax contribution to the pension plan. The individual receiving benefits in the year from a state pension plan should get a Form 1099-R showing the total benefits received in the tax year from the pension plan. The individual can determine the federal taxable amount of the benefits by using the general rule or the simplified general rule which is described in federal publication 17 or federal publication 575. Note that members who first receive pension benefits after November 18, 1996, must compute the federal taxable amount of their pension benefits by using the simplified general rule shown in the federal tax publications. Note also that individuals receiving benefits in the tax year from IPERS who started receiving benefits in 1993 or in later years will receive information with the 1099-R form which shows the amount of gross benefits received in the tax year that is taxable for federal income tax purposes.

40.50(3) *Computing the taxable amount of state pension benefits for state individual income tax purposes.* An individual receiving state pension benefits in the tax year must have a number of facts about the state pension in order to be able to compute the taxable amount of the pension for Iowa income tax purposes. The individual must know the gross pension benefits received in the tax year, the taxable amount of the pension for federal income tax purposes, the employee's contribution to the pension for federal income tax purposes, and the employee's contribution to the pension for state income tax purposes. In situations where the employee's contribution for state income tax purposes is equal to the contribution for federal income tax purposes, the same amount of the pension will be taxable on the state income tax return as is taxable on the federal return.

In cases when all of an individual's employment covered by a state pension plan occurred on or after January 1, 1995, so that all the contributions to the pension plan (other than posttax service purchases) for the employee were made on a pretax basis for federal income tax purposes, all of the benefits received from the pension would be taxed on the federal income tax return. In this situation, the state taxable amount of the pension would be computed using the general rule or the simplified general rule shown in federal publication 17 or federal publication 575. The employee's state contribution or state basis would be entered on line 2 of the worksheet in the federal publication that is usually used to compute the taxable amount of the pension for the federal income tax return.

To compute the state taxable amount of the state pension in situations where the employee had a contribution to the pension for federal tax purposes, the federal taxable amount for the year is first subtracted from the gross pension benefit received in the year which leaves the amount of the pension received in the year which was not taxable on the federal return. Next, the member's posttax contribution or basis in the pension for federal tax purposes is divided by the member's posttax contribution or basis in the pension for state income tax purposes which provides the ratio of the member's federal basis or contribution to the member's state contribution or basis. Next, the amount of the state pension received in the year that is not taxed on the federal return is divided by the ratio or percentage that was determined in the previous step, which provides the exempt amount of the pension for state tax purposes. Finally, the state exempt amount determined in the previous step is subtracted from the gross amount received in the year, which leaves the taxable amount for state income tax purposes. Note that individuals who retired in 1993 and in years after 1993 and are receiving benefits from IPERS will receive information from IPERS which will advise them of the taxable amount of the pension for state income tax purposes. The examples in subrule 40.50(4) are provided to illustrate how the state taxable amounts of state pension benefits received in the tax year are computed in different factual situations.

40.50(4) *Examples.*

a. A state employee retired in April 1996 and started receiving IPERS benefits in April 1996. The retired state employee received $1,794.45 in gross benefits from IPERS in 1996. The federal taxable amount of the benefits was $1,690.36. The employee's federal posttax contribution or basis in the pension was $4,907 and the state posttax contribution or basis was $7,194. The nontaxable amount of the IPERS benefits for federal income tax was $104.09 which was calculated by subtracting the federal taxable amount of $1,690.36 from the gross amount of the benefits of $1,794.45. The ratio of the employee's posttax contribution to the pension for federal income tax purposes was 68.21 percent of the employee's contribution to the pension for state income tax purposes. This was determined by dividing $4,907 by $7,194. The nontaxable amount of the IPERS benefit for federal income tax purposes of $104.09 was

then divided by 68.21 percent, which is the ratio determined in the previous step, and which results in a total of $152.60. This was the nontaxable amount of the pension for state income tax purposes. When $152.60 is subtracted from the gross benefits of $1,794.45 paid in the year, the remaining amount is $1,641.85 which is the taxable amount of the pension that should be reported on the individual's Iowa individual income tax return for the 1996 tax year.

b. A state employee retired in July 1995. The retired employee received $1,881.88 in IPERS benefits in 1996 and $1,790.60 of the benefits was taxable on the individual's federal return for 1996. The person's federal posttax contribution to the IPERS pension was $3,130 and the posttax contribution for state income tax purposes was $3,821. The amount of benefits not taxable for federal income tax purposes was $91.28 which was computed by subtracting the amount of pension benefits of $1,790.60 that was taxable on the federal income tax return from the gross benefits of $1,881.88 received in 1996. The retiree's federal posttax contribution of $3,130 to IPERS was divided by the retiree's posttax contribution of $3,821 to IPERS for state income tax purposes which resulted in a ratio of 81.91 percent. The amount of IPERS benefits of $91.28 exempt for federal income tax purposes is divided by the 81.91 percent computed in the previous step which results in an amount of $111.44 which is the amount of IPERS benefits received in 1996 which is not taxable on the Iowa return. $111.44 is subtracted from the gross benefits of $1,881.88 received in 1996 which leaves the state taxable amount for 1996 of $1,770.44.

This rule is intended to implement Iowa Code section 422.7 as amended by 1998 Iowa Acts, House File 2513.

701—40.51(422) Exemption of active-duty military pay of national guard personnel and armed forces military reserve personnel for overseas services pursuant to military orders for peacekeeping in the Bosnia-Herzegovina area. For active duty military pay received on or after November 21, 1995, by national guard personnel and by armed forces military reserve personnel, the pay is exempt from state income tax to the extent the military pay was earned overseas for services performed pursuant to military orders related to peacekeeping in the Bosnia-Herzegovina area. In order for the active duty pay to qualify for exemption from tax, the military service had to have been performed outside the United States, but not necessarily in the Bosnia-Herzegovina area.

This rule is intended to implement Iowa Code section 422.7 as amended by 1997 Iowa Acts, House File 355.

701—40.52(422) Mutual funds. Iowa does not tax dividend or interest income from regulated investment companies to the extent that such income is derived from interest on United States Government obligations or obligations of this state and its political subdivisions. The exemption is also applicable to income from regulated investment companies which is derived from interest on government-sponsored enterprises and agencies where federal law specifically precludes state taxation of such interest. Income derived from interest on securities which are merely guaranteed by the federal government or from repurchase agreements collateralized by the United States Government obligations is not excluded and is subject to Iowa income tax. There is no distinction between Iowa's tax treatment of interest received by a direct investor as compared with a mutual fund shareholder. The interest retains its same character when it "flows-through" the mutual fund and is subject to taxation accordingly.

Taxpayers may subtract from federal adjusted gross income, income received from any of the obligations listed in 701—subrule 40.2(1) and rule 701—40.3(422) above, even if the obligations are owned indirectly through owning shares in a mutual fund:

1. If the fund invests exclusively in these state tax-exempt obligations, the entire amount of the distribution (income) from the fund may be subtracted.

2. If the fund invests in both exempt and nonexempt obligations, the amount represented by the percentage of the distribution that the mutual fund identifies as exempt may be subtracted.

3. If the mutual fund does not identify an exempt amount or percentage, taxpayers may figure the amount to be subtracted by multiplying the distribution by the following fraction: as the numerator, the amount invested by the fund in state-exempt United States obligations; as the denominator, the fund's total investment. Use the year-end amounts to figure the fraction if the percentage ratio has remained

constant throughout the year. If the percentage ratio has not remained constant, take the average of the ratios from the fund's quarterly financial reports.

Therefore, if the federal adjusted gross income of an individual, taxable by Iowa, includes dividends or interest of this type, an adjustment must be made deducting the amount of the dividend or interest.

This rule is intended to implement Iowa Code section 422.7.

701—40.53(422) Deduction for contributions by taxpayers to the Iowa educational savings plan trust and addition to income for refunds of contributions previously deducted. The Iowa educational savings plan trust was created so that individuals can contribute funds on behalf of beneficiaries in accounts administered by the secretary of state to cover future higher education costs of the beneficiaries. The following subrules provide details on how individuals' net incomes are affected by contributions to beneficiaries' accounts, interest and any other earnings earned on beneficiaries' accounts, and refunds of contributions which were previously deducted.

40.53(1) *Deduction from net income for contributions made to the Iowa educational savings plan trust on behalf of beneficiaries.* Effective with contributions made on or after July 1, 1998, an individual referred to as a "participant" can claim a deduction on the Iowa individual income tax return for contributions made by that individual to the Iowa educational savings plan trust on behalf of a beneficiary. The deduction on the 1998 Iowa return cannot exceed $2,000 per beneficiary for contributions made in 1998 or the adjusted maximum annual amount for contributions made after 1998. Note that the maximum annual amount that can be deducted per beneficiary may be adjusted or increased to an amount greater than $2,000 for inflation on an annual basis. Rollover contributions from other states' educational savings plans will qualify for the deduction, subject to the maximum amount allowable. Starting with tax years beginning in the 2000 calendar year, a participant may contribute an amount on behalf of a beneficiary that is greater than $2,000, but may claim a deduction on the Iowa individual return of the lesser of the amount given or $2,000 as adjusted by inflation. For example, if a taxpayer made a $5,000 contribution on behalf of a beneficiary to the educational savings plan in 2000, the taxpayer may claim a deduction on the IA 1040 return for 2000 in the amount of $2,054, as this amount is $2,000 as adjusted for inflation in effect for 2000.

For example, an individual has ten grandchildren from the age of six months to 12 years. In October 1998, the person became a participant in the Iowa educational savings plan trust by making $2,000 contributions to the trust on behalf of each of the ten grandchildren. When the participant files the 1998 Iowa individual income tax return, the participant can claim a deduction on the return for the $20,000 contributed to the Iowa educational savings plan trust on behalf of the individual's ten grandchildren.

40.53(2) *Exclusion of interest and earnings on beneficiary accounts in the Iowa educational savings plan trust.* To the extent that interest or other earnings accrue on a beneficiary's account in the Iowa educational savings plan trust, the interest or other earnings are excluded for purposes of computing net income on the Iowa individual income tax return of the participant or the return of the beneficiary.

40.53(3) *Including on the Iowa individual return amounts refunded to the participant from the Iowa educational savings plan trust that had previously been deducted.* If a participant cancels a beneficiary's account in the Iowa educational savings plan trust and receives a refund of the funds in the account made on behalf of the beneficiary, or if a participant makes a withdrawal from the Iowa educational savings plan trust for purposes other than the payment of qualified education expenses, the refund of the funds is to be included in net income on the participant's Iowa individual income tax return to the extent that contributions to the account had been deducted on prior state individual income tax returns of the participant.

For example, because a beneficiary of a certain participant died in the year 2000, this participant in the Iowa educational savings plan trust canceled the participant agreement for the beneficiary with the trust and received a refund of $4,200 of funds in the beneficiary's account. Because $4,000 of the refund represented contributions that the participant had deducted on prior Iowa individual income tax returns, the participant was to report on the Iowa return for the tax year 2000, $4,000 in contributions that had been deducted on the participant's Iowa returns for 1998 and 1999.

40.53(4) *Deduction for contributions made to the endowment fund of the Iowa educational savings plan trust.* To the extent that the contribution was not deductible for federal income tax purposes, an individual can deduct on the Iowa individual income tax return a gift, grant, or donation to the endowment fund of the Iowa educational savings plan trust. The contribution must be made on or after July 1, 1998, but before April 15, 2004. Effective April 15, 2004, the deduction for contributions made to the endowment fund is repealed.

This rule is intended to implement Iowa Code section 422.7 as amended by 2007 Iowa Acts, House File 923.

701—40.54(422) Roth individual retirement accounts. Roth individual retirement accounts were authorized in the Taxpayer Relief Act of 1997 and are applicable for tax years beginning after December 31, 1997. Generally, no deduction is allowed on either the federal income tax return or the Iowa individual income tax return for a contribution to a Roth IRA. The following subrules include information about tax treatment of certain transactions for Roth IRAs.

40.54(1) *Taxation of income derived from rolling over or converting existing IRAs to Roth IRAs.* At the time existing IRAs are rolled over to or converted to Roth IRAs in the 1998 calendar year or in a subsequent year, any income realized from the rollover or conversion of the existing IRA is taxable. However, in the case of conversion of existing IRAs to Roth IRAs in 1998, the taxpayer can make an election to have all the income realized from the conversion subject to tax in 1998 rather than have the conversion income spread out over four years. If the conversion income is spread out over four years, one-fourth of the conversion income is included on the 1998 Iowa and federal returns of the taxpayer and one-fourth of the income is included on the taxpayer's Iowa and federal returns for each of the following three tax years. Note that if an existing IRA for an individual is converted to a Roth IRA for the individual in a calendar year after 1998, all the income realized from the conversion is to be reported on the federal return and the Iowa return for that tax year for the individual. That is, when conversion of existing IRAs to Roth IRAs occurs after 1998, there is no provision for having the conversion income taxed over four years.

For example, an Iowa resident converted three existing IRAs to one Roth IRA in 1998, realized $20,000 in income from the conversion, and did not elect to have all the conversion income taxed on the 1998 Iowa and federal returns. Because the taxpayer did not make the election so all the conversion income was taxed in 1998, $5,000 in conversion income was to be reported on the taxpayer's federal and Iowa returns for 1998 and similar incomes were to be reported on the federal and Iowa returns for 1999, 2000, and 2001. Note that to the extent the recipient of the Roth IRA conversion income is eligible, the conversion income is subject to the pension/retirement income exclusion described in rule 40.47(422).

40.54(2) *Roth IRA conversion income for part-year residents.* To the extent that an Iowa resident has Roth IRA conversion income on the individual's federal income tax return, the same income will be included on the resident's Iowa income tax return. However, when an individual with Roth IRA conversion income in the tax year is a part-year resident of Iowa, the individual may allocate the conversion income on the Iowa return in the ratio of the taxpayer's months in Iowa during the tax year to 12 months. In a situation where an individual spends more than half of a month in Iowa, that month is to be reported to Iowa for purposes of the allocation.

For example, an individual moved to Des Moines from Omaha on June 12, 1998, and had $20,000 in Roth IRA conversion income in 1998. Because the individual spent 7 months in Iowa in 1998, 7/12, or 60 percent, of the $20,000 in conversion income is allocated to Iowa. Thus, $12,000 of the conversion income should be reported on the taxpayer's Iowa return for 1998.

This rule is intended to implement Iowa Code section 422.7 as amended by 1998 Iowa Acts, Senate File 2357.

701—40.55(422) Exemption of income payments for victims of the Holocaust and heirs of victims. For tax years beginning on or after January 1, 2000, income payments received by individuals because they were victims of the Holocaust or income payments received by individuals who are heirs of victims of the Holocaust are excluded in the computation of net incomes, to the extent the payments

were included in the individuals' federal adjusted gross incomes. Victims of the Holocaust were victims of persecution in the World War II era for racial, ethnic or religious reasons by Nazi Germany or other Axis regime.

Holocaust victims may receive income payments for slave labor performed in the World War II era. Income payments may also be received by Holocaust victims as reparation for assets stolen from, hidden from, or otherwise lost in the World War II era, including proceeds from insurance policies of the victims. The World War II era includes the time of the war and the time immediately before and immediately after the war. However, income from assets acquired with the income payments or from the sale of those assets shall not be excluded from the computation of net income. The exemption of income payments shall only apply to the first recipient of the income payments who was either a victim of persecution by Nazi Germany or any other Axis regime or a person who is an heir of the victim of persecution.

This rule is intended to implement Iowa Code sections 217.39 and 422.7.

701—40.56(422) Taxation of income from the sale of obligations of the state of Iowa and its political subdivisions. For tax years beginning on or after January 1, 2001, income from the sale of obligations of the state of Iowa and its political subdivisions shall be added to Iowa net income to the extent not already included. Gains or losses from the sale or other disposition of bonds issued by the state of Iowa or its political subdivisions shall be included in Iowa net income unless the law authorizing these obligations specifically exempts the income from the sale or other disposition of the bonds from the Iowa individual income tax.

This rule is intended to implement Iowa Code section 422.7 as amended by 2001 Iowa Acts, chapter 116.

701—40.57(422) Installment sales by taxpayers using the accrual method of accounting. For tax years beginning on or after January 1, 2000, and prior to January 1, 2002, taxpayers who use the accrual method of accounting and who have sales or exchanges of property that they reported on the installment method for federal income tax purposes must report the total amount of the gain or loss from the transaction in the tax year of the sale or exchange pursuant to Section 453 of the Internal Revenue Code as amended up to and including January 1, 2000.

EXAMPLE 1. Taxpayer Jones uses the accrual method of accounting for reporting income. In 2001, Mr. Jones sold farmland he had held for eight years for $200,000 which resulted in a capital gain of $50,000. For federal income tax purposes, Mr. Jones elected to report the transaction on the installment basis, where he reported $12,500 of the gain on his 2001 federal return and will report capital gains of $12,500 on each of his federal returns for the 2002, 2003 and 2004 tax years.

However, for Iowa income tax purposes, Mr. Jones must report on his 2001 Iowa return the entire capital gain of $50,000 from the land sale. Although Taxpayer Jones must report a capital gain of $12,500 on each of his federal income tax returns for 2002, 2003 and 2004, from the installment sale of the farmland in 2001, he will not have to include the installments of $12,500 on his Iowa income tax returns for those three tax years because Mr. Jones had reported the entire capital gain of $50,000 from the 2001 transaction on his 2001 Iowa income tax return.

EXAMPLE 2. Taxpayer Smith uses the accrual method of accounting for reporting income. In 2002, Mr. Smith sold farmland he had held for eight years for $500,000 which resulted in a capital gain of $100,000. For federal income tax purposes, Mr. Smith elected to report the transaction on the installment basis, where he reported $20,000 of the gain on his 2002 federal return and will report the remaining capital gains on federal returns for the four subsequent tax years. Because this installment sale occurred in 2002, Mr. Smith shall report $20,000 of the capital gain on his Iowa income tax return for 2002 and will report the balance of the capital gains from the installment sale on Iowa returns for the next four tax years, the same as reported on his federal returns for those years.

This rule is intended to implement Iowa Code section 422.7 as amended by 2002 Iowa Acts, House File 2116.

701—40.58(422) Exclusion of distributions from retirement plans by national guard members and members of military reserve forces of the United States. For tax years beginning on or after January 1, 2002, members of the Iowa national guard or members of military reserve forces of the United States who are ordered to state military service or federal service or duty are not subject to Iowa income tax on the amount of distributions received during the tax year from qualified retirement plans of the members to the extent the distributions were taxable for federal income tax purposes. In addition, the members are not subject to state penalties on the distributions even though the members may have been subject to federal penalties on the distributions for early withdrawal of benefits. Because the distributions described above are not taxable for Iowa income tax purposes, a national guard member or armed forces reserve member who receives a distribution from a qualified retirement plan may request that the payer of the distribution not withhold Iowa income tax from the distribution.

This rule is intended to implement Iowa Code section 422.7 as amended by 2004 Iowa Acts, House File 2208.

701—40.59(422) Exemption of payments received by a beneficiary from an annuity purchased under an employee's retirement plan when the installment has been included as part of a decedent employee's estate. All payments received on or after July 1, 2002, by a beneficiary of a deceased pensioner or annuitant are exempt from Iowa income tax to the extent the payments are from an annuity purchased under an employee's pension or retirement plan when the commuted value of the installments has been included as a part of the decedent employee's estate for Iowa inheritance tax purposes. Thus, a lump sum payment received by a beneficiary from an annuity purchased under an employee's pension or retirement plan is exempt from Iowa income tax to the extent the commuted value of the annuity was included as part of the decedent employee's estate for Iowa inheritance tax purposes. Under prior law, only installment payments of an annuity received by a beneficiary were exempt from Iowa income tax if the commuted value of the installments had been included as part of the decedent employee's estate for Iowa inheritance tax purposes.

This rule is intended to implement Iowa Code section 422.7 as amended by 2002 Iowa Acts, Senate File 2305.

701—40.60(422) Additional first-year depreciation allowance.

40.60(1) *Assets acquired after September 10, 2001, but before May 6, 2003.* For tax periods ending after September 10, 2001, but beginning before May 6, 2003, the additional first-year depreciation allowance ("bonus depreciation") of 30 percent authorized in Section 168(k) of the Internal Revenue Code, as enacted by Public Law No. 107-147, Section 101, does not apply for Iowa individual income tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on assets acquired after September 10, 2001, but before May 6, 2003, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after September 10, 2001, but before May 6, 2003, can be calculated on Form IA 4562A.

See 701—subrule 53.22(1) for examples illustrating how this subrule is applied.

40.60(2) *Assets acquired after May 5, 2003, but before January 1, 2005.* For tax periods beginning after May 5, 2003, but beginning before January 1, 2005, the bonus depreciation of 50 percent authorized in Section 168(k) of the Internal Revenue Code, as amended by Public Law No. 108-27, Section 201, may be taken for Iowa individual income tax. If the taxpayer elects to take the 50 percent bonus depreciation, the depreciation deduction allowed on the Iowa individual income tax return is the

same as the depreciation deduction allowed on the federal income tax return for assets acquired after May 5, 2003, but before January 1, 2005.

a. If the taxpayer elects to take the 50 percent bonus depreciation and had filed an Iowa return prior to February 24, 2005, which reflected the disallowance of 50 percent bonus depreciation, the taxpayer may choose between two options to reflect this change. Taxpayer may either file an amended return for the applicable tax year to reflect the 50 percent bonus depreciation provision, or taxpayer may reflect the change for 50 percent bonus depreciation on the next Iowa return filed subsequent to February 23, 2005. Taxpayer must choose only one of these two options. Regardless of the option chosen, taxpayer must complete and attach a revised Form IA 4562A to either the amended return or the return filed subsequent to February 23, 2005.

EXAMPLE 1: Taxpayer filed a 2003 Iowa individual income tax return on April 15, 2004, which reflected an adjustment of $50,000 for the difference between federal depreciation and Iowa depreciation relating to the disallowance of 50 percent bonus depreciation. Taxpayer now elects to take the 50 percent bonus depreciation for Iowa tax purposes. Taxpayer may either amend the 2003 Iowa return to reflect a $50,000 reduction in Iowa taxable income, or taxpayer may take the additional deduction of $50,000 on taxpayer's 2004 Iowa return that is filed after February 23, 2005.

EXAMPLE 2: Assume the same facts as given in Example 1, and taxpayer filed a 2004 Iowa return prior to February 24, 2005. Taxpayer did not take an additional $50,000 deduction on the 2004 Iowa return. Taxpayer may either amend the 2003 Iowa return to reflect a $50,000 reduction in Iowa taxable income, or taxpayer may take the additional deduction of $50,000 on taxpayer's 2005 Iowa return.

b. If the taxpayer elects not to take the 50 percent bonus depreciation, taxpayer must add the total amount of depreciation claimed on assets acquired after May 5, 2003, but before January 1, 2005, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k). If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets. The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after May 5, 2003, but before January 1, 2005, can be calculated on Form IA 4562A.

40.60(3) *Assets acquired after December 31, 2007, but before January 1, 2009.* For tax periods beginning after December 31, 2007, but beginning before January 1, 2009, the bonus depreciation of 50 percent authorized in Section 168(k) of the Internal Revenue Code, as amended by Public Law No. 110-185, Section 103, does not apply for Iowa individual income tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on assets acquired after December 31, 2007, but before January 1, 2009, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after December 31, 2007, but before January 1, 2009, can be calculated on Form IA 4562A.

See rule 701—53.22(422) for examples illustrating how this rule is applied.

This rule is intended to implement Iowa Code section 422.7.

701—40.61(422) Exclusion of active duty pay of national guard members and armed forces military reserve members for service under orders for Operation Iraqi Freedom, Operation Noble Eagle or Operation Enduring Freedom. For tax years beginning on or after January 1, 2003, active duty pay received by national guard members and armed forces reserve members is excluded to the extent

the income is included in federal adjusted gross income and to the extent the active duty pay is for service under military orders for Operation Iraqi Freedom, Operation Noble Eagle or Operation Enduring Freedom. National guard members and military reserve members receiving active duty pay on or after January 1, 2003, for service not covered by military orders for one of the three operations specified above are subject to Iowa income tax on the active duty pay to the extent the active duty pay is included in federal adjusted gross income. An example of a situation where the active duty pay may not be included in federal adjusted gross income is when the active duty pay was received for service in an area designated as a combat zone or in an area designated as a hazardous duty area so the income may be excluded from federal adjusted gross income. That is, if an individual's active duty military pay is not subject to federal income tax, the active duty military pay will not be taxable on the individual's Iowa income tax return.

National guard members and military reserve members who are receiving active duty pay for service on or after January 1, 2003, that is exempt from Iowa income tax, may complete an IA W-4 Employee Withholding Allowance Certificate and claim exemption from Iowa income tax for active duty pay received during the time they are serving on active duty pursuant to military orders for Operation Iraqi Freedom, Operation Noble Eagle or Operation Enduring Freedom.

This rule is intended to implement Iowa Code section 422.7 as amended by 2003 Iowa Acts, House File 674.

701—40.62(422) Deduction for overnight expenses not reimbursed for travel away from home of more than 100 miles for performance of service as a member of the national guard or armed forces military reserve. A taxpayer may subtract, in computing net income, the costs not reimbursed that were incurred for overnight transportation, meals and lodging expenses for travel away from the taxpayer's home more than 100 miles, to the extent the travel expenses were incurred for the performance of services on or after January 1, 2003, by the taxpayer as a national guard member or an armed forces military reserve member. The deduction for Iowa tax purposes is the same that is allowed for federal income tax purposes.

This rule is intended to implement Iowa Code section 422.7 as amended by 2005 Iowa Acts, House File 186.

701—40.63(422) Exclusion of income from military student loan repayments. Individuals serving on active duty in the national guard, armed forces military reserve or the armed forces of the United States may subtract, to the extent included in federal adjusted gross income, income from military student loan repayments made on or after January 1, 2003.

This rule is intended to implement Iowa Code section 422.7 as amended by 2003 Iowa Acts, House File 674.

701—40.64(422) Exclusion of death gratuity payable to an eligible survivor of a member of the armed forces, including a member of a reserve component of the armed forces who has died while on active duty. An eligible survivor of a member of the armed forces, including a member of a reserve component of the armed forces, who has died while on active duty may subtract, to the extent included in federal adjusted gross income, a gratuity death payment made to the eligible survivor of a member of the armed forces who died while on active duty after September 10, 2001. This exclusion applies to a gratuity death payment made to the eligible survivor of any person in the armed forces or a reserve component of the armed forces who died while on active duty after September 10, 2001.

The purpose of the death gratuity is to provide a cash payment to assist a survivor of a deceased member of the armed forces to meet financial needs during the period immediately following a service member's death and before other survivor benefits, if any, become available.

This rule is intended to implement Iowa Code section 422.7 as amended by 2003 Iowa Acts, House File 674.

701—40.65(422) Section 179 expensing. For tax periods beginning on or after January 1, 2003, but beginning before January 1, 2006, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 108-27, Section 202, may be taken for Iowa individual income tax. If the taxpayer elects to take the increased Section 179 expensing, the Section 179 expensing allowance on the Iowa individual income tax return is the same as the Section 179 expensing allowance on the federal income tax return for tax years beginning on or after January 1, 2003, but beginning before January 1, 2006. In addition, for tax periods beginning on or after January 1, 2008, but beginning before January 1, 2009, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No.110-185, Section 102, may be taken for Iowa individual income tax.

40.65(1) If the taxpayer elects to take the increased Section 179 expensing and had filed an Iowa return prior to February 24, 2005, which reflected the disallowance of increased Section 179 expensing, the taxpayer may choose between two options to reflect this change. Taxpayer may either file an amended return for the applicable tax year to reflect the increased Section 179 expensing, or taxpayer may reflect the change for increased Section 179 expensing on the next Iowa return filed subsequent to February 23, 2005. Taxpayer must choose only one of these two options. Regardless of the option chosen, taxpayer must complete and attach a revised Form IA 4562A to either the amended return or the return filed subsequent to February 23, 2005.

EXAMPLE 1: Taxpayer filed a 2003 Iowa individual income tax return on April 15, 2004, which reflected an adjustment of $50,000 for the difference between the federal Section 179 expensing allowance and the Iowa Section 179 expensing allowance. Taxpayer now elects to take the increased Section 179 expensing allowance for Iowa tax purposes. Taxpayer may either amend the 2003 Iowa return to reflect a $50,000 reduction in Iowa taxable income, or taxpayer may take the additional deduction of $50,000 on taxpayer's 2004 Iowa return that is filed after February 23, 2005.

EXAMPLE 2: Assume the same facts as given in Example 1, and taxpayer filed a 2004 Iowa return prior to February 24, 2005. Taxpayer did not take an additional $50,000 deduction on the 2004 Iowa return. Taxpayer may either amend the 2003 Iowa return to reflect a $50,000 reduction in Iowa taxable income, or taxpayer may take the additional deduction of $50,000 on taxpayer's 2005 Iowa return.

40.65(2) If the taxpayer elects not to take the increased Section 179 expensing, the expensing allowance is limited to $25,000 for Iowa tax purposes. The difference between the federal Section 179 expensing allowance on such property, if in excess of $25,000, and the Iowa expensing allowance of $25,000 can be depreciated using the modified accelerated cost recovery system (MACRS) applicable under Section 168 of the Internal Revenue Code without regard to the bonus depreciation provision in Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable Section 179 and related depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both the Section 179 expensing allowance and related depreciation, along with the gain or loss on the sale of qualifying assets for tax years beginning on or after January 1, 2003, but beginning before January 1, 2006, can be calculated on Form IA 4562A.

See 701—subrule 53.23(2) for examples illustrating how this subrule is applied.

This rule is intended to implement Iowa Code section 422.7 as amended by 2008 Iowa Acts, Senate File 2123.

701—40.66(422) Deduction for certain unreimbursed expenses relating to a human organ transplant. For tax years beginning on or after January 1, 2005, a taxpayer, while living, may subtract up to $10,000 in unreimbursed expenses that were incurred relating to the taxpayer's donation of all or part of a liver, pancreas, kidney, intestine, lung or bone marrow to another human being for immediate human organ transplantation. The taxpayer can claim this deduction only once, and the deduction can be claimed in the year in which the transplant occurred. The unreimbursed expenses must not be compensated by insurance to qualify for the deduction.

The unreimbursed expenses which are eligible for the deduction include travel expenses, lodging expenses and lost wages. If the deduction is claimed for travel expenses and lodging expenses, these expenses cannot also be claimed as an itemized deduction for medical expenses under Section 213(d) of the Internal Revenue Code for Iowa tax purposes. The deduction for lost wages does not include any sick pay or vacation pay reimbursed by an employer.

This rule is intended to implement Iowa Code section 422.7 as amended by 2005 Iowa Acts, House File 801.

701—40.67(422) Deduction for alternative motor vehicles. For tax years beginning on or after January 1, 2006, but beginning before January 1, 2011, a taxpayer may subtract $2,000 for the cost of a clean fuel motor vehicle if the taxpayer was eligible to claim for federal tax purposes the alternative motor vehicle credit under Section 30B of the Internal Revenue Code for this motor vehicle.

The vehicles eligible for this deduction include new qualified fuel cell motor vehicles, new advanced lean burn technology motor vehicles, new qualified hybrid motor vehicles and new qualified alternative fuel vehicles. These vehicles must be placed in service after December 31, 2005, but before January 1, 2011, to qualify for the deduction. A taxpayer must claim a credit on the taxpayer's federal income tax return on federal Form 8910 to claim the deduction on the Iowa return.

This rule is intended to implement Iowa Code section 422.7 as amended by 2006 Iowa Acts, House File 2461.

701—40.68(422) Injured veterans grant program.

40.68(1) For tax years beginning on or after January 1, 2006, a taxpayer who receives a grant under the injured veterans grant program provided in 2006 Iowa Acts, Senate File 2312, section 1, may subtract, to the extent included in federal adjusted gross income, the amount of the grant received. The injured veterans grant program is administered by the Iowa department of veterans affairs, and grants of up to $10,000 are provided to veterans who are residents of Iowa and are injured in the line of duty in a combat zone or in a zone where the veteran was receiving hazardous duty pay after September 11, 2001.

40.68(2) For tax years beginning on or after January 1, 2006, a taxpayer may subtract, to the extent not otherwise deducted in computing adjusted gross income, the amounts contributed to the department of veterans affairs for the purpose of providing grants under the injured veterans grant program established in 2006 Iowa Acts, Senate File 2312, section 1. If a deduction is claimed for these amounts contributed to the injured veterans grant program, this deduction cannot also be claimed as an itemized deduction for charitable contributions under Section 170 of the Internal Revenue Code for Iowa tax purposes.

This rule is intended to implement Iowa Code section 422.7 as amended by 2006 Iowa Acts, Senate File 2312.

701—40.69(422) Exclusion of ordinary or capital gain income realized as a result of involuntary conversion of property due to eminent domain. For tax years beginning on or after January 1, 2006, a taxpayer may exclude the amount of ordinary or capital gain income realized as a result of the involuntary conversion of property due to eminent domain for Iowa individual income tax. Eminent domain refers to the authority of government agencies or instrumentalities of government to requisition or condemn private property for any public improvement, public purpose or public use. The exclusion for Iowa individual income tax can only be claimed in the year in which the ordinary or capital gain income was reported on the federal income tax return.

In order for an involuntary conversion to qualify for this exclusion, the sale must occur due to the requisition or condemnation, or its threat or imminence, if it takes place in the presence of, or under the threat or imminence of, legal coercion relating to a requisition or condemnation. There are numerous federal revenue rulings, court cases and other provisions relating to the definitions of the terms "threat" and "imminence," and these are equally applicable to the exclusion of ordinary or capital gains realized for tax years beginning on or after January 1, 2006.

40.69(1) *Reporting requirements.* In order to claim an exclusion of ordinary or capital gain income realized as a result of involuntary conversion of property due to eminent domain, the taxpayer must attach a statement to the Iowa individual income tax return in the year in which the exclusion is claimed. The statement should state the date and details of the involuntary conversion, including the amount of the gain being excluded and the reasons why the gain meets the qualifications of an involuntary conversion relating to eminent domain. In addition, if the gain results from the sale of replacement property as outlined in subrule 40.69(2), information must be provided in the statement on that portion of the gain that qualified for the involuntary conversion.

40.69(2) *Claiming the exclusion when gain is not recognized for federal tax purposes.* For federal tax purposes, an ordinary or capital gain is not recognized when the converted property is replaced with property that is similar to, or related in use to, the converted property. In those cases, the basis of the old property is simply transferred to the new property, and no gain is recognized. In addition, when property is involuntarily converted into money or other unlike property, any gain is not recognized when replacement property is purchased within a specified period for federal tax purposes.

For Iowa individual income tax purposes, no exclusion will be allowed for ordinary or capital gain income when there is no gain recognized for federal tax purposes. The exclusion will only be allowed in the year in which ordinary or capital gain income is realized due to the disposition of the replacement property for federal tax purposes, and the exclusion is limited to the amount of the ordinary or capital gain income relating to the involuntary conversion. The basis of the property for Iowa individual income tax purposes will remain the same as the basis for federal tax purposes and will not be altered because of the exclusion allowed for Iowa individual income tax.

EXAMPLE: In 2007, taxpayer sold some farmland as a result of an involuntary conversion relating to eminent domain and realized a gain of $50,000. However, the taxpayer purchased similar farmland immediately after the sale, and no gain was recognized for federal tax purposes. Therefore, no exclusion is allowed on the 2007 Iowa individual income tax return. In 2009, taxpayer sold the replacement farmland that was not subject to an involuntary conversion and realized a total gain of $70,000, which was reported on the 2009 federal income tax return. The taxpayer can claim a deduction of $50,000 on the 2009 Iowa individual income tax return relating to the gain that resulted from the involuntary conversion.

This rule is intended to implement Iowa Code section 422.7.

701—40.70(422) Exclusion of income from sale, rental or furnishing of tangible personal property or services directly related to production of film, television or video projects. For tax years beginning on or after January 1, 2007, a taxpayer who is a resident of Iowa may exclude, to the extent included in federal adjusted gross income, income received from the sale, rental or furnishing of tangible personal property or services directly related to the production of film, television, or video projects that are registered with the film office of the Iowa department of economic development.

Income which can be excluded on the Iowa return must meet the criteria of a qualified expenditure for purposes of the film qualified expenditure tax credit as set forth in rule 701—42.35(15,422). See rule 701—38.17(422) for the determination of Iowa residency.

However, if a taxpayer claims this income tax exclusion, the same taxpayer cannot also claim the film qualified expenditure tax credit as described in rule 701—42.35(15,422). In addition, any taxpayer who claims this income tax exclusion cannot have an equity interest in a business which received a film qualified expenditure tax credit. Finally, any taxpayer who claims this income tax exclusion cannot participate in the management of the business which received the film qualified expenditure tax credit.

EXAMPLE: A production company which registers with the film office for a project is a limited liability company with three members, all of whom are Iowa residents. If any of the three members receives income that is a qualified expenditure for purposes of the film qualified expenditure tax credit, such member(s) cannot exclude this income on the Iowa income tax return because the member(s) has an equity interest in the business which received the credit.

This rule is intended to implement Iowa Code section 422.7 as amended by 2007 Iowa Acts, House File 892, section 4.

701—40.71(422) Exclusion for certain victim compensation payments. Effective for tax years beginning on or after January 1, 2007, a taxpayer may exclude from Iowa individual income tax any income received from certain victim compensation payments to the extent this income was reported on the federal income tax return. The amounts which may be excluded from income include the following:

1. Victim compensation awards paid under the victim compensation program administered by the department of justice in accordance with Iowa Code section 915.81, and received by the taxpayer during the tax year.

2. Victim restitution payments received by a taxpayer during the tax year in accordance with Iowa Code chapter 910 or 915.

3. Damages awarded by a court, and received by a taxpayer, in a civil action filed by a victim against an offender during the tax year.

This rule is intended to implement Iowa Code section 422.7 as amended by 2007 Iowa Acts, Senate File 70.

701—40.72(422) Exclusion of Vietnam Conflict veterans bonus.

40.72(1) For tax years beginning on or after January 1, 2007, a taxpayer who received a bonus under the Vietnam Conflict veterans bonus program may subtract, to the extent included in federal adjusted gross income, the amount of the bonus received. The Vietnam Conflict veterans bonus is administered by the Iowa department of veterans affairs, and bonuses of up to $500 are awarded to residents of Iowa who served on active duty in the armed forces of the United States between July 1, 1973, and May 31, 1975.

40.72(2) For tax years beginning on or after January 1, 2008, a taxpayer who received a bonus under the Vietnam Conflict veterans bonus program may subtract, to the extent included in federal adjusted gross income, the amount of the bonus received. The Vietnam Conflict veterans bonus is administered by the Iowa department of veterans affairs. Bonuses of up to $500 are awarded to veterans who were inducted into active duty service from the state of Iowa, who served on active duty in the United States armed forces from July 1, 1958, through May 31, 1975, and who have not received a bonus for that service from Iowa or another state.

This rule is intended to implement Iowa Code section 422.7 as amended by 2008 Iowa Acts, House File 2283.

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◊ Two or more ARCs

CHAPTER 41
DETERMINATION OF TAXABLE INCOME
[Prior to 12/17/86, Revenue Department[730]]

701—41.1(422) Verification of deductions required. Deductions from gross income, otherwise allowable, will not be allowed in cases where the department requests the taxpayer to furnish information sufficient to enable it to determine the validity and correctness of such deductions, until such information is furnished. For taxpayers using an electronic data interchange process or technology also see 701—subrule 11.4(4).

This rule is intended to implement Iowa Code section 422.25.

701—41.2(422) Federal rulings and regulations. In determining whether "taxable income," "net operating loss deduction" or any other deductions are computed for federal tax purposes under, or have the same meaning as provided by, the Internal Revenue Code, the department will use applicable rulings and regulations that have been duly promulgated by the commissioner of internal revenue, unless the director has created rules and regulations or has exercised discretionary powers as prescribed by statute which calls for an alternative method for determining "taxable income," "net operating loss deduction" or any other deduction, or unless the department finds that an applicable internal revenue ruling or regulation is unauthorized according to the Iowa Code.

This rule is intended to implement Iowa Code sections 422.7 and 422.9.

701—41.3(422) Federal income tax deduction and federal refund. Federal income taxes paid or accrued during the tax year are a permissible deduction for Iowa income tax purposes, adjusted by any federal refunds received or accrued during the tax year. Taxpayers who are not on an accrual basis of accounting shall deduct their federal income taxes in the year paid.

41.3(1) *Federal income tax deduction.* The federal income tax deduction for cash basis taxpayers equals the sum of the following:

a. The entire amount of federal income tax withheld during the taxable year from compensation of the taxpayer. Where a husband and wife file separate returns or separately on a combined Iowa return, the actual federal income tax withheld from wages earned by either spouse or both spouses must be deducted by each in accordance with wage statement(s) and may not be prorated between the spouses.

b. Tax paid at any time during the taxable year on a filing of federal estimated tax or on any amendment to such filing. Where a husband and wife file separate Iowa returns or separately on a combined Iowa return, the federal estimated tax payments made in the tax year shall be prorated between the spouses by the ratio of each spouse's income not subject to withholding to the total income not subject to withholding of both spouses, including the federal estimated tax payment made in January of the tax year which was made for the prior tax year. If an estimated tax payment or portion of the payment is made for self-employment tax, then the spouse who has earned the self-employment income shall report the amount of estimated tax designated as self-employment tax. The federal tax deduction for the tax year does not include the self-employment tax paid through the federal estimated payments made in the tax year. However, one-half of the self-employment tax paid in the tax year is deductible in computing federal adjusted gross income pursuant to Section 164(f) of the Internal Revenue Code so this self-employment tax is also deductible in computing net income.

c. Any additional federal tax on a prior federal return paid during the taxable year. Where a husband and wife file separately or separately on a combined Iowa return, additional federal tax paid shall be prorated between the spouses by the ratio of net income reported by each spouse to total net income of both spouses in the year for which the additional federal tax was paid. If additional federal tax paid includes federal self-employment tax, then that amount of self-employment tax shall be deducted by the spouse who earned the self-employment income. Any federal tax paid for a tax year in which an Iowa individual income tax return was not required to be filed is not allowed as a deduction in the year the federal taxes were paid.

EXAMPLE 1. Individual A earned $8,500 in income for the 2004 tax year and paid $200 in federal tax with the filing of the federal return in 2005. Individual A was not required to file an Iowa return for 2004 because the Iowa net income was under $9,000. Individual A cannot claim a deduction for the $200 in federal tax paid on the 2005 Iowa return because an Iowa return was not required to be filed for the 2004 tax year.

EXAMPLE 2. Individual B moved into Iowa on January 1, 2005, and filed an initial Iowa individual income tax return for the 2005 tax year. Individual B paid $1,000 in additional federal income tax with the filing of the 2004 federal income tax return in 2005. Individual B cannot claim a deduction for the $1,000 in federal tax paid on the 2005 Iowa return because an Iowa return was not filed for the 2004 tax year.

d. The earned income credit computed under Section 32 of the Internal Revenue Code and the additional child tax credit computed under Section 24(d) of the Internal Revenue Code, to the extent that these credits reduce the federal income tax liability on the prior federal return filed during the taxable year. Where a husband and wife file separately or separately on a combined Iowa return, the earned income credit and the additional child tax credit shall be prorated between the spouses by the ratio of net income reported by each spouse to total net income of both spouses in the year for which these credits were claimed.

EXAMPLE: Individual A filed a 2003 federal income tax return reporting a tax liability of $2,000. Individual A had $500 of federal income tax withheld and $2,500 of earned income credit. Individual A can deduct $500 as a federal income tax deduction on the Iowa return for 2003 and $1,500 as a federal tax deduction on the Iowa return for 2004, since the federal tax deduction is limited to the extent it reduced the federal income tax liability.

e. The motor vehicle fuel tax credit computed under Section 34 of the Internal Revenue Code for the taxable year. Where a husband and wife file separately or separately on a combined Iowa return, the motor vehicle fuel tax credit shall be prorated between the spouses by the ratio of net income reported by each spouse to total net income of both spouses in the year for which these credits were claimed.

EXAMPLE: Individual B filed a 2003 federal income tax return reporting a tax liability of $1,500. Individual B paid $1,000 in federal estimated tax during 2003 and claimed a $400 motor vehicle fuel tax credit on the 2003 federal return. Individual B can deduct $1,400 as a federal income tax deduction on the Iowa return for 2003.

41.3(2) *Federal income tax refunds.*

a. Any refund of federal income tax received during the taxable year must be used to reduce the amount deducted for federal income tax to the extent the refunded amount was deducted on the Iowa return in a prior year. When a husband and wife file separately or separately on a combined Iowa return, the federal income tax refund to be reported shall be prorated between the spouses by the ratio of net income reported by each spouse to total net income reported by both spouses. If an amount of self-employment tax is required to be added back to Iowa net income, then the spouse who earned the self-employment income which generated the self-employment tax shall report that amount as an addition to net income. Any federal tax refund received for a tax year in which an Iowa individual income tax return was not required to be filed is not required to be reported in the year the federal refund was received.

EXAMPLE 1: Individual A earned $7,500 in income for the 2004 tax year and had $1,000 in federal income tax withheld. Individual A received a refund of the entire $1,000 federal tax withheld with the filing of the federal return in 2005. Individual A was not required to file an Iowa return for 2004 because the Iowa net income was under $9,000. Individual A does not have to report the $1,000 federal refund received on the 2005 Iowa return because an Iowa return was not required to be filed for the 2004 tax year.

EXAMPLE 2: Individual B moved into Iowa on July 1, 2005, and filed an initial Iowa individual income tax return for the 2005 tax year. Individual B received a $2,000 federal income tax refund with the filing of the 2004 federal income tax return in 2005. Individual B does not have to report the $2,000 federal refund on the 2005 Iowa return because an Iowa return was not filed for the 2004 tax year.

b. Any portion of the federal refund received due to the earned income credit computed under Section 32 of the Internal Revenue Code or the additional child tax credit computed under Section 24(d) of the Internal Revenue Code does not have to be reported on the Iowa return. However, any portion of the federal refund received due to the motor vehicle fuel tax credit computed under Section 34 of the Internal Revenue Code does have to be reported on the Iowa return.

EXAMPLE 1: Individual A filed a 2003 federal income tax return reporting a tax liability of $2,000. Individual A had $500 of federal income tax withheld and $2,500 of earned income credit and received a federal income tax refund of $1,000 after filing the return in 2004. Individual A does not have to report the $1,000 federal refund on the Iowa return for 2004, since the refund resulted from the earned income credit.

EXAMPLE 2: Individual B filed a 2003 federal income tax return reporting a tax liability of $500. Individual B had $1,000 of federal income tax withheld and $1,000 of earned income credit and received a federal income tax refund of $1,500 after filing the return in 2004. Individual B must report a $500 federal refund on the Iowa return for 2004, since the portion of the refund relating to the earned income credit does not have to be reported.

EXAMPLE 3: Individual C filed a 2003 federal income tax return reporting a tax liability of $1,000. Individual C paid $900 in federal estimated tax and claimed a $400 federal motor vehicle fuel tax credit and received a federal refund of $300 after filing the return in 2004. Individual C must report the $300 federal refund on the Iowa return for 2004, since the refund resulted from the motor vehicle fuel tax credit.

41.3(3) *Federal income tax deduction—part-year residents.*

a. For tax years beginning on or before December 31, 1981, the federal income tax deduction attributable to Iowa by part-year residents shall be determined by multiplying the federal tax paid or accrued for the entire taxable year by a fraction, the numerator of which is the Iowa net income and the denominator of which is the federal adjusted gross income except that the taxpayer can deduct actual federal income tax withheld on that income subject to withholding which was earned while the taxpayer was an Iowa resident if the federal tax withheld on the Iowa income is separately shown on the wage statement(s) of the taxpayer.

b. For tax years beginning on or after January 1, 1982, the federal income tax deduction attributable to Iowa by part-year residents shall be the same deduction as is available for resident taxpayers.

41.3(4) *Federal income tax deduction—nonresidents.*

a. For tax years beginning on or before December 31, 1981, the federal income tax deduction attributable to Iowa by nonresidents shall be determined by multiplying the federal tax paid or accrued for the entire taxable year by a fraction, the numerator of which is the Iowa net income and denominator of which is the federal adjusted gross income.

If separate Iowa nonresident returns are filed by a husband and wife who filed a joint federal return, each spouse's Iowa adjusted gross income must be divided by the total federal net income of both spouses in order to compute a ratio that can be used to determine the federal tax deduction attributable to each spouse. In any event, the ratio including the combined ratio of husband and wife cannot exceed 100 percent.

Federal income taxes paid during the taxable year on prior years' federal income tax returns will not be allowable on the nonresident return for the taxable year unless Iowa returns were filed for the prior years for which the federal taxes were paid.

Any federal income tax, either paid by a nonresident or withheld from their compensation, which is later refunded to the taxpayer, shall be included as Iowa income by the nonresident for the year the refund is received, in the same portion that such federal tax was deducted by the nonresident in a prior Iowa income tax return.

b. For tax years beginning on or after January 1, 1982, the federal income tax deduction attributable to Iowa by nonresidents of Iowa shall be the same deduction as is available for resident taxpayers.

41.3(5) *Federal rebate received in 2001.* For tax years beginning in the 2001 calendar year, the federal tax rebate or advanced refund of federal income tax provided to certain individuals in 2001 pursuant to the federal Economic Growth and Tax Relief Reconciliation Act of 2001 is not to be included as part of an individual's federal income tax refund for the individual's federal tax deduction for Iowa individual income tax purposes. The federal rebate is also referred to as the tax reduction credit.

EXAMPLE. John and Betty Smith received a federal refund of $1,200 in March 2001 from federal income tax that had been deducted on their 2000 Iowa individual income tax return. The Smiths also received a refund of federal income tax of $500 in June 2001 from an amended 1999 federal return. The federal income tax refunded had been deducted on the Smiths' 1999 Iowa income tax return. Finally, the Smiths received a $600 federal rebate in August 2001. When the Smiths file their 2001 Iowa return, they must report an aggregate federal income tax refund of $1,700. This is $1,200 from the refund from their 2000 federal return and $500 from the refund from their amended 1999 federal return. However, the Smiths are not to include as part of the federal income tax refund shown on their 2001 Iowa return the $600 federal rebate they received in August 2001.

41.3(6) *Federal rate reduction credit and the federal income tax deduction for the 2002 tax year.* For tax years beginning in the 2002 calendar year, the tax reduction credit or the advanced refund of federal income tax provided to certain individuals pursuant to the federal Economic Growth and Tax Relief Reconciliation Act of 2001 is not to be included as part of an individual's federal income tax refund for Iowa individual income tax purposes. The tax reduction credit was also referred to as the federal rebate when it was refunded to some taxpayers during the 2001 calendar year. This subrule does not apply to those taxpayers who received the federal rebate in the 2001 calendar year.

EXAMPLE. When Joe and Donna Brown completed their 2001 federal income tax return, they received the benefit of a rate reduction credit of $600 which resulted in the Browns' receiving a federal income tax refund of $400 in May 2002. Because the entire federal income tax refund was attributable to the rate reduction credit of $600, the Browns do not need to report the $400 refund of federal income tax when they complete their Iowa income tax return for 2002.

41.3(7) *Federal rebate received in 2008.* For tax years beginning in the 2008 calendar year, the federal tax rebate or advanced refund of federal income tax provided to certain individuals in 2008 pursuant to the federal Economic Stimulus Act of 2008 is not to be included as part of an individual's federal income tax refund for the individual's federal tax deduction for Iowa individual income tax purposes.

EXAMPLE. Frank and Jane Casey received a federal refund of $1,300 in March 2008 from federal income tax that had been deducted on their 2007 Iowa individual income tax return. Frank and Jane also received a $1,200 federal rebate in June 2008. When Frank and Jane file their 2008 Iowa return, they must report a federal income tax refund of $1,300. However, they are not required to include as part of the federal income tax refund shown on their 2008 Iowa return the $1,200 federal rebate they received in June 2008.

This rule is intended to implement Iowa Code section 422.9 as amended by 2008 Iowa Acts, House File 2417.

701—41.4(422) Optional standard deduction. An optional standard deduction is provided on the Iowa individual income tax return for both residents and nonresidents. In the case of married taxpayers filing separate returns or separately on the combined return, if one spouse takes the optional standard deduction, the other spouse must also take the optional standard deduction. The standard deduction claimed by the taxpayer may not exceed the taxpayer's income before the standard deduction.

A taxpayer has the option of itemizing deductions or of using the optional standard deduction on the Iowa return, regardless of the deduction method used on the federal return.

For tax years beginning on or after January 1, 1990, the optional standard deduction amounts are indexed or increased for inflation by the cumulative standard deduction factor. The cumulative standard deduction factor is described in rule 701—38.12(422).

41.4(1) *Direct charitable contribution for individuals claiming the optional standard deduction.* Rescinded IAB 3/26/08, effective 4/30/08.

41.4(2) Reserved.

This rule is intended to implement Iowa Code sections 422.4 and 422.9.

701—41.5(422) Itemized deductions. Deductions may be itemized on the Iowa return to the same extent that they are allowable on the federal return with the following exceptions:

41.5(1) To the extent that Iowa income taxes were included in itemized deductions allowable for federal income tax purposes, they must be subtracted from the itemized deductions to be deducted on the Iowa return.

41.5(2) For the tax years beginning on or after January 1, 2004, and before January 1, 2008, the itemized deduction for state sales and use taxes is allowed on the Iowa return only if the taxpayer elected to deduct state sales and use taxes as an itemized deduction in lieu of the deduction for state income taxes on the federal return under Section 164 of the Internal Revenue Code.

If the taxpayer elected to deduct state income taxes as an itemized deduction on the federal return, taxpayer cannot claim an itemized deduction for state sales and use taxes on the Iowa return. In addition, if taxpayer claimed the standard deduction in accordance with Section 63 of the Internal Revenue Code on the federal return, taxpayer cannot claim an itemized deduction for state sales and use taxes on the Iowa return.

If the taxpayer is allowed to deduct state sales and use taxes as an itemized deduction on the Iowa return, taxpayer cannot claim an itemized deduction on the Iowa return for either the school district surtax imposed under Iowa Code section 257.21 or the emergency medical services income surtax imposed under Iowa Code chapter 422D.

41.5(3) Adoption expense deduction. Unreimbursed amounts paid by the taxpayer in the adoption of a child if placed by a licensed agency under Iowa Code chapter 238, by an agency that meets the provisions of the interstate compact in Iowa Code section 232.158 or by a person making an independent placement under Iowa Code chapter 600, which exceed 3 percent of the taxpayer's net income, or the combined net income of a husband and wife in the case of married taxpayers filing a joint return, will be allowed as a deduction in the year paid. Qualifying expenses include all medical, hospital, legal fees, welfare agency fees, and all other costs relating to the adoption of a child. Those expenses claimed for adoption purposes may not be claimed elsewhere on the individual income tax return.

41.5(4) Deduction for expenses for the care of certain disabled relatives.

a. For tax years beginning on or after January 1, 1983, a deduction from net income may be taken for expenses incurred by a taxpayer for care of a disabled person who is unable to live independently. Such care must be provided in the home in which the taxpayer resides throughout the year. A person is considered to be incapable of living independently if as a result of a physical or mental defect the person is incapable of caring for the person's hygienical or nutritional needs or requires the full-time attention of another person for personal safety or the safety of others. The fact that an individual, by reason of a physical or mental defect, is unable to engage in any substantial gainful activity, or is unable to perform the normal household functions of a homemaker or to care for minor children, does not of itself establish that the individual is physically or mentally incapable of self-care. An individual who is physically handicapped or is mentally defective, and for such reason requires the constant attention of another person, is considered to be physically or mentally incapable of self-care.

To qualify for the deduction, in addition to being disabled, the person must be the grandchild, child, parent or grandparent of the taxpayer or the taxpayer's spouse, and

(1) Be receiving medical assistance benefits under Iowa Code chapter 249A; or

(2) Be eligible to receive such benefits under the income and resource levels established in Iowa Code chapter 239B; or

(3) Would be eligible to receive such benefits if living in a health-care facility licensed under Iowa Code chapter 135C.

Expenses incurred for a taxpayer's disabled spouse do not qualify for the deduction.

b. The deductible amount is limited to $5,000 for each disabled person cared for in the taxpayer's home and the expenses must not be otherwise deductible as a deduction from net income under Iowa Code section 422.9.

c. Qualifying expenses include a proportionate share of food expenses as well as amounts spent directly on the disabled person for such items as clothing, medical care, dental care and transportation.

Medical expenses incurred for a disabled relative, which are eliminated from federal itemized deductions because of the federal adjusted gross income percentage limitation, may be included in the deduction for expenses incurred for the care of the disabled relative providing the other requirements are met. Following are examples to illustrate the portion of medical expenses incurred which would be deductible.

EXAMPLE 1. Mr. and Mrs. Smith care for Mrs. Smith's mother in their home. Mrs. Smith's mother is physically unable to live independently and qualifies for medical assistance benefits under Iowa Code chapter 249A. Mr. and Mrs. Smith paid medical expenses of $1,500 for themselves and $500 for Mrs. Smith's mother. The medical expenses for Mrs. Smith's mother are includable as federal itemized deductions. Mr. and Mrs. Smith's federal adjusted gross income is $20,000. For 1983, the federal deduction for medical expenses would be $1,000 ($2,000 minus 5 percent of $20,000 or $1,000). Since the deductible amount for federal tax purposes is $1,000 or 50 percent of the total medical expenses of Mr. and Mrs. Smith and Mrs. Smith's mother, there remains 50 percent of the $500 expense for Mrs. Smith's mother (or $250) which can be included in the Iowa deduction for a disabled relative.

EXAMPLE 2. Mr. and Mrs. Smith's medical expenses were $400 and Mrs. Smith's mother's expenses were $200. None of the $600 in expenses would be deductible as a federal itemized deduction but the mother's $200 in expenses would be includable in the Iowa deduction for expenses incurred for a disabled relative.

d. Expenses not directly related to care of a disabled relative are not deductible. This category includes rent, mortgage interest, utilities, house insurance and taxes. Such expenses would be incurred without the disabled relative in the home and unless an expense can be directly attributed to the disabled relative, it may not be deducted.

e. In the event that the person being cared for is receiving assistance benefits under Iowa Code chapter 239B, the expenses qualifying for deduction shall be the net difference between the expenses actually incurred in caring for the person which are not otherwise deductible as a deduction to net income and the assistance benefits under Iowa Code chapter 239B. Iowa Code chapter 239B covers family investment program payments.

f. In order to claim a deduction for expenses for care of a disabled relative, a schedule of qualifying expenses must be provided with the tax return as well as a statement from a qualified physician certifying that the disabled individual is unable to live independently. Such certification must be filed with the tax return in the initial year for the deduction and every third year thereafter.

41.5(5) Deduction for payments of tuition and textbooks for dependents in grades kindergarten through 12 in Iowa. For tax years beginning on or after January 1, 1987, but prior to January 1, 1996, individuals who itemize deductions for Iowa income tax purposes may claim a deduction of up to $1,000 per dependent for amounts paid for tuition and textbooks for those dependents attending grades kindergarten through 12 in Iowa. Taxpayers who itemize deductions on Iowa individual income tax returns for tax years beginning on or after January 1, 1996, and have tuition and textbook expenses may claim the tax credit described in 701—subrule 42.2(8) if they meet the qualifications for the credit. In order to qualify a taxpayer for the deduction for tuition and textbooks, the elementary school or secondary school the dependent is attending must meet the standards for accreditation of public and nonpublic schools in Iowa provided in Iowa Code section 256.11.

In addition, the elementary school or secondary school the dependent is attending must not be operated for profit and must adhere to the provisions of the United States Civil Rights Act of 1964, and the provisions of Iowa Code chapter 216 which is known as the Iowa civil rights Act of 1965.

Amounts paid for tuition and textbooks for attendance of a dependent in a nursery school or a prekindergarten school or a school for postgraduates of a secondary school do not qualify for the deduction for tuition and textbooks.

The deduction for tuition and textbooks is not allowed on returns for taxpayers that have federal adjusted gross incomes of $45,000 or more. In the case of married taxpayers, the deduction is not allowed if the combined federal adjusted gross income of the taxpayer and spouse is $45,000 or more.

For tax years beginning on or after January 1, 1991, taxpayers' net incomes instead of their federal adjusted gross incomes are used to determine whether or not the taxpayers are eligible for the tuition and textbook deduction or the tuition and textbook credit. Therefore, a taxpayer filing a 1991 state income tax return would not be eligible for the tuition and textbook deduction if the taxpayer's Iowa net income was $45,000 or more even if the taxpayer's federal adjusted gross income was less than $45,000.

The following definitions and criteria apply to the itemized deduction for amounts paid for tuition and textbooks:

a. "Tuition" means any charges for the expense of personnel, buildings, equipment and materials other than textbooks, and other expenses of elementary or secondary schools which relate to the teaching only of those subjects legally and commonly taught in public schools in Iowa. "Tuition" includes charges by a qualified school for summer school classes or for private instruction of a child who is physically unable to attend classes at the site of the school.

"Tuition" does not include charges or fees which relate to the teaching of religious tenets, doctrines, or worship in cases where the purpose of the teaching is to inculcate the religious tenets, doctrines, or worship. It does not include amounts paid to an individual instructor for private instruction of a dependent. "Tuition" also does not include amounts paid to a school which pertain to "extracurricular activities" which are described in paragraph *"c"* of this subrule. Amounts paid to a school for meals, lodging, or clothing of a dependent do not qualify for the deduction for "tuition."

b. "Textbooks" means books and other instructional materials used in elementary and secondary schools in teaching only those subjects legally and commonly taught in public elementary and secondary schools in Iowa. Fees or charges by the school for required supplies or materials for classes in art, home economics or shop qualify for the deduction as "textbooks."

"Textbooks" does not include amounts paid for instructional materials used in the teaching of religious tenets, doctrines, or worship in cases where the purpose of the teaching is to inculcate the religious tenets, doctrines, or worship. The deduction for "textbooks" also does not include amounts incurred for books, supplies, or materials used for "extracurricular activities." "Extracurricular activities" are described in paragraph *"c"* of this subrule.

c. "Extracurricular activities" includes sporting events such as football, wrestling, basketball, volleyball, and track. It also includes plays or dramatic events, speech activities such as debates, concerts, dances, band contests, choral contests and events, contests and activities of a similar nature. Driver's education is considered to be an "extracurricular activity" for purposes of the deduction for tuition and textbooks. Therefore, even if driver's education is taken for credit toward a student's graduation requirements, amounts paid for tuition or for textbooks for driver's education may not be taken as part of the deduction for tuition and textbooks.

d. Divorced or separated taxpayers who pay amounts for tuition and textbooks for their children attending grades kindergarten through 12 in Iowa can claim the deduction for tuition and textbooks only if the amounts paid are for children the taxpayers can claim as dependents on their Iowa returns for the tax year.

e. Records to be retained to support the deduction for tuition and textbooks. Taxpayers claiming a deduction for amounts paid for tuition and textbooks must complete statements and information documenting the deduction. The statement must include the following information: name of each dependent for which the deduction is claimed; name and address of each school the dependent attended where amounts were paid for tuition and textbooks; amounts paid for tuition which qualify for the deduction; amounts paid for textbooks which qualify for the deduction; total amount paid for tuition and textbooks which qualifies for the deduction for each dependent (not to exceed $1,000); and the total amount paid by the taxpayer for tuition and textbooks for all dependents which qualifies for the deduction. This statement should be retained so it may be provided to the department of revenue in case of audit. Other records supporting the deduction which should also be retained include canceled checks, receipts, statements of charges for tuition and textbooks from primary and secondary schools, and any other documents which support the deduction.

f. Proration of amounts paid for tuition which pertain to classes for subjects legally and commonly taught in public schools in Iowa. To the extent that the total amount paid to a school for tuition for a

dependent attending grades kindergarten through 12 at a primary or secondary school pertains to classes for subjects legally and commonly taught in public schools in Iowa, the amount paid is deductible. In instances where there are separate tuition charges for extracurricular activities or for classes for religious instruction, those tuition charges do not qualify for the deduction for tuition and textbooks. However, in situations where the total tuition charges of a school for a dependent cover extracurricular activities and classes for religious instruction as well as classes for subjects legally and commonly taught in public schools in Iowa, a proration of the tuition must be made to determine the portion of the tuition charges that are deductible. The tuition deduction for a dependent may be calculated on the basis of the time spent by the dependent in classes for subjects legally and commonly taught in Iowa's public schools to the total time spent by the dependent in school. For example, a taxpayer paid $500 to a private school for tuition for a dependent for a semester. During the semester, the dependent had eight class periods each school day. The dependent spent one period in a class for religious instruction. The dependent had another period in the school day spent in practice for an extracurricular activity. The dependent spent the rest of the school day in classes for subjects legally and commonly taught in Iowa's public schools. Seventy-five percent of the dependent's time at the school was spent in classes for subjects legally and commonly taught in Iowa's public schools. Therefore, 75 percent of the tuition paid for the semester or $375 qualifies for the deduction for tuition and textbooks.

g. Allocation of amounts paid for tuition and textbooks between married taxpayers filing separately. In the case of married taxpayers who have paid amounts for tuition and textbooks for a dependent attending an elementary school or secondary school in Iowa, the deduction for tuition and textbooks must be allocated between the spouses if the taxpayers elect to file separate Iowa returns or separately on the combined return form. The deduction for tuition and textbooks must be allocated between the spouses in the ratio of each spouse's net income to the combined net income of both spouses unless one spouse can prove that all the amounts paid for tuition and textbooks were paid by that spouse.

41.5(6) Rescinded IAB 11/24/04, effective 12/29/04.

41.5(7) Deduction of multipurpose vehicle registration fee. For tax years beginning on or after January 1, 1992, and before January 1, 2005, individuals who itemize deductions for Iowa income tax purposes may claim a deduction for 60 percent of the amount of the registration fee paid for a multipurpose vehicle under Iowa Code section 321.124, subsection 3, paragraph *"h."* "Multipurpose vehicle" means a motor vehicle designed to carry not more than ten people and constructed either on a truck chassis or with special features for occasional off-road operation. The registration certificate for a multipurpose vehicle has the letters "MV" printed next to the word "style" on the certificate.

This subrule applies only to model year 1992 and older model year multipurpose vehicles. The registration fees for multipurpose vehicles for the 1993 model year and for model years after 1993 are the same as for other motor vehicles where the fees for newer model year vehicles are based on the value and weight of the vehicle. In order to qualify for this deduction, no part of the multipurpose vehicle registration fee may have been deducted as an itemized deduction under Section 164 of the Internal Revenue Code or as an ordinary and necessary business expense.

See also subrule 41.5(9), which provides for the deduction for registration fees for older motor vehicles. Subrule 41.5(7) also applies to multipurpose vehicles to the extent those vehicles are for the 1993 model year or for model years after 1993.

For tax years beginning on or after January 1, 2005, the itemized deduction for Iowa income tax for multipurpose vehicle registration fees is the same as allowed under Section 164 of the Internal Revenue Code for federal tax purposes.

41.5(8) Medical expense deduction limitation. For tax years beginning on or after January 1, 1996, to the extent that a taxpayer has a medical care expense deduction on the federal return under Section 213 of the Internal Revenue Code, the taxpayer must compute the medical care expense deduction on the Iowa return by excluding those health insurance premiums deducted in computing net income in accordance with Iowa Code subsection 422.7(29) and rule 701—40.48(422).

41.5(9) Deduction of older motor vehicle registration fee. For tax years beginning on or after January 1, 2002, and before January 1, 2005, individuals who itemize deductions for Iowa income tax purposes may claim a deduction for 60 percent of the annual registration fee paid for certain older motor vehicles.

This deduction applies to a 1994 model year vehicle or a newer model year vehicle that is nine model years old or older. This deduction also applies to a 1993 or older motor vehicle which has been transferred to a new owner or to a 1993 or older model vehicle that was brought into Iowa on or after January 1, 2002. However, the deduction otherwise allowed pursuant to this subrule is not allowed to the extent that the vehicle was used in the taxpayer's trade or business so that the deduction for the registration of the vehicle has already been allowed in the computation of Iowa net income.

For tax years beginning on or after January 1, 2005, the itemized deduction for Iowa income tax for older motor vehicle registration fees is the same as allowed under Section 164 of the Internal Revenue Code for federal tax purposes.

41.5(10) Additional first-year depreciation allowance. For tax periods ending on or after September 10, 2001, any federal itemized deductions that are determined based on a percentage of a taxpayer's federal adjusted gross income may have to be adjusted for Iowa tax purposes. These itemized deductions for Iowa individual tax purposes are based on federal adjusted gross income as adjusted by the disallowance of the additional first-year depreciation allowance authorized in Section 168(k) of the Internal Revenue Code as described in rule 701—40.60(422).

EXAMPLE: Mr. and Mrs. Jones reported $50,000 in federal adjusted gross income on their 2002 federal income tax return. Mr. and Mrs. Jones paid medical expenses of $5,000 for 2002, but could only claim an itemized deduction for medical expenses for federal tax purposes equal to $1,250, or to the extent the medical expenses exceeded 7.5 percent of their federal adjusted gross income ($50,000 times 7.5% = $3,750. $5,000 - $3,750 = $1,250). Mr. and Mrs. Jones reported a $5,000 increase in Iowa adjusted gross income due to the disallowance of additional first-year depreciation on their Iowa return for 2002. Mr. and Mrs. Jones can claim an itemized deduction on the 2002 Iowa return for medical expenses of $875, or to the extent the medical expenses exceeded 7.5 percent of their adjusted gross income for Iowa purposes of $55,000 ($55,000 times 7.5% = $4,125. $5,000 - $4,125 = $875).

41.5(11) Charitable contributions made in January 2005 for relief of victims of the Indian Ocean tsunami. For cash contributions made after December 31, 2004, and before February 1, 2005, to charitable organizations for the purpose of helping victims of the Indian Ocean tsunami, the taxpayer may claim this contribution as an itemized deduction on the 2004 Iowa income tax return if the taxpayer elected to claim this contribution as an itemized deduction on the 2004 federal tax return. If the taxpayer elected to claim the cash contribution made in January 2005 as an itemized deduction on the 2005 federal tax return, then it must be claimed as an itemized deduction on the 2005 Iowa return.

41.5(12) Medical expense deduction for certain unreimbursed expenses relating to a human organ transplant. For tax years beginning on or after January 1, 2005, a taxpayer who claims a deduction for unreimbursed travel and lodging expenses relating to a human organ transplant in accordance with rule 701—40.66(422) cannot claim an itemized deduction for medical expenses under Section 213(d) of the Internal Revenue Code for these same expenses for Iowa tax purposes.

41.5(13) Charitable contributions relating to the injured veterans grant program. For tax years beginning on or after January 1, 2006, a taxpayer who claims a deduction for contributions to the injured veterans grant program in accordance with 701—subrule 40.68(2) cannot claim an itemized deduction for charitable contributions under Section 170 of the Internal Revenue Code for the same contribution for Iowa tax purposes.

41.5(14) Charitable contributions relating to school tuition organizations. For tax years beginning on or after January 1, 2006, a taxpayer who claims a school tuition organization tax credit in accordance with rule 701—42.30(422) cannot claim an itemized deduction for charitable contributions under Section 170 of the Internal Revenue Code for the amount of the contribution to the school tuition organization for Iowa tax purposes.

41.5(15) Charitable contributions relating to the charitable conservation contribution tax credit. For tax years beginning on or after January 1, 2008, a taxpayer who claims a charitable conservation contribution tax credit in accordance with rule 701—42.38(422) cannot claim an itemized deduction for charitable contributions for the amount of the contribution for which the tax credit is claimed. See 701—subrule 42.38(2) for examples illustrating how this subrule is applied.

This rule is intended to implement Iowa Code Supplement sections 422.7 and 422.9.

701—41.6(422) Itemized deductions—separate returns by spouses. Where both spouses itemize deductions, the deductions must be divided between them in the ratio that each spouse's separate Iowa net income bears to the total Iowa net income of both spouses unless each spouse can show that the spouse paid for or is entitled to accrue the deductions. It will be presumed that the deductions are paid by both spouses and must be prorated if the deductions were paid from a joint checking account of both spouses. In any event, all itemized deductions must either be prorated between spouses or must be specifically deducted by the spouse that paid for the deductions. No combinations of the two methods will be permitted.

This rule is intended to implement Iowa Code section 422.9.

701—41.7(422) Itemized deductions—part-year residents.

41.7(1) Rescinded IAB 3/26/08, effective 4/30/08.

41.7(2) For tax years beginning on or after January 1, 1982, itemized deductions attributable to Iowa by part-year residents shall be the itemized deductions allowable for resident taxpayers.

This rule is intended to implement Iowa Code sections 422.7, 422.8 and 422.9.

701—41.8(422) Itemized deductions—nonresidents.

41.8(1) Rescinded IAB 3/26/08, effective 4/30/08.

41.8(2) For tax years beginning on or after January 1, 1982, itemized deductions attributable to Iowa by nonresidents shall be the itemized deductions available for resident taxpayers.

This rule is intended to implement Iowa Code sections 422.5, 422.7 and 422.9.

701—41.9(422) Annualizing income. Where a taxpayer is required to annualize income for federal income tax purposes the taxpayer must also annualize on the Iowa return.

This rule is intended to implement Iowa Code section 422.7.

701—41.10(422) Income tax averaging. There is no provision in the Iowa Code which allows income tax averaging.

This rule is intended to implement Iowa Code sections 422.7 and 422.5.

701—41.11(422) Reduction in state itemized deductions for certain high-income taxpayers. For tax years beginning after December 31, 1990, the itemized deductions for certain high-income taxpayers are reduced for federal income tax purposes by the lesser of 3 percent of the excess of adjusted gross income (AGI) over the applicable amount, or 80 percent of the amount of itemized deductions otherwise allowable for the taxable year. For 1991, the applicable amount is $100,000 ($50,000 in the case of a married person filing a separate federal return). The applicable amount is to be increased each tax year to reflect inflation in the taxable years after 1991. For example, for 1995 the applicable amount is $114,700 ($57,350 in the case of a married person filing a separate return). This reduction in itemized deductions for certain high-income taxpayers applies for Iowa individual income tax purposes for the same tax years that the provision applies for federal income tax purposes. The following subrules clarify how the reduction in itemized deductions is to be determined on the Iowa individual income tax return:

41.11(1) *Itemized deduction worksheet (Form 41-104).* High-income taxpayers who are itemizing deductions on the Iowa income tax return and whose itemized deductions for federal income tax purposes were subject to reduction because their federal adjusted gross incomes exceeded certain amounts (the amounts for 1996 were $117,950 for all taxpayers except married taxpayers who filed separate federal returns and $58,975 for married individuals who filed separate federal returns) must complete Itemized Deduction Worksheet (Form 41-104) to determine the amount of federal itemized deductions that can be claimed on the Iowa income tax return. This worksheet must also be used to compute the itemized deductions allowable on the Iowa return for taxpayers who claimed the standard deduction on their federal individual income tax return, but are itemizing deductions for Iowa income tax purposes and whose deductions would have been subject to reduction, if they had itemized deductions on their federal income tax return. These taxpayers must complete the worksheet (Form 41-104) as if they had itemized deductions on their federal returns. Generally, the itemized deductions allowed on the federal income tax

return for high-income taxpayers are also allowed for Iowa individual income tax purposes, except that the Iowa income tax that was allowable as a deduction on the federal Schedule A is not allowed as an Iowa itemized deduction. In addition, the deduction for medical expenses claimed as an itemized deduction on the federal income tax return should be reduced by the amount of health insurance premiums claimed as a deduction on line 18 of the IA 1040. The line references on Form 41-104 are to the federal 1040 and to the federal Schedule A for 1996 and to the IA 1040 for the 1996 tax year. Similar line references will apply on Form 41-104 and to IA 1040 for any later tax year when the taxpayer's federal itemized deductions were subject to reduction because the taxpayer's federal adjusted gross income exceeded the threshold amount for that year and the taxpayer itemized deductions on the Iowa income tax return. Note that if a taxpayer's itemized deductions are less than the Iowa standard deduction amount, the taxpayer may elect to claim the Iowa standard deduction.

Form 41-104 follows:

1. Enter the allowable federal itemized deductions as shown on line 34 of the 1040.	1. _____
2. Add the amounts on federal Schedule A, lines *4, 13, 19 plus any gambling losses including on line 27 and enter the total here.	2. _____
3. Subtract line 2 amount from line 1 amount.	3. _____
4. Add the amounts on federal Schedule A, lines *4, 9, 14, 18, 19, 26, and 27 and enter the total here.	4. _____
5. Subtract line 2 amount from line 4 amount.	5. _____
6. Divide line 3 by line 5 and enter percentage here.	6. _____ %
7. Enter the amount of Iowa income tax that is included in line 5 of the federal Schedule A.	7. _____
8. Multiply line 7 by the percentage on line 6.	8. _____
9. Subtract line 8 from line 1. Enter this amount here and on line 39 of the IA 1040.	9. _____

*The deduction for medical expenses from line 4 of federal Schedule A must be reduced by the amount of any health insurance premiums that were deducted on line 18 of Form IA 1040 in computing the taxpayer's net income for the tax year.

41.11(2) *Possible problem with itemized deduction worksheets for 1992, 1993, and 1994 returns.* Rescinded IAB 3/26/08, effective 4/30/08.

This rule is intended to implement Iowa Code sections 422.3 and 422.9.

701—41.12(422) Deduction for home mortgage interest for taxpayers with mortgage interest credit. For tax years beginning on or after January 1, 1996, any taxpayer who had the mortgage interest credit on the federal return can claim a deduction on the Schedule A of the IA 1040 for all the mortgage interest paid in the tax year, including the mortgage interest that was not deducted on the federal return due to the mortgage interest credit.

This rule is intended to implement Iowa Code sections 422.3 and 422.9.

701—41.13(422) Iowa income taxes and Iowa tax refund. As provided in subrule 41.5(1), Iowa individual income taxes paid or accrued are allowable itemized deductions for federal income tax purposes, but are not allowable itemized deductions for Iowa income tax purposes. To the extent Iowa income taxes were deducted as itemized deductions for federal tax purposes, they shall be disallowed as an itemized deduction for Iowa income tax purposes.

Refunds of Iowa income taxes to the extent that the refunds were included in the determination of federal adjusted gross income shall be allowed as a reduction to Iowa adjusted gross income, only to the extent that an itemized deduction for Iowa income taxes was disallowed on a prior Iowa return. Iowa

income tax refunds resulting from Iowa refundable income tax credits are not allowed as a reduction for Iowa income tax purposes.

EXAMPLE: Individual A made Iowa estimated payments of $2,000 during the 2003 tax year. The $2,000 of estimated payments was claimed as an itemized deduction for federal tax purposes, but was not allowed as an itemized deduction for Iowa tax purposes. The 2003 Iowa return reported a tax liability of $1,600. Individual A had $2,000 of Iowa estimated payments and a $500 ethanol blended gasoline tax credit, and received a $900 Iowa tax refund in 2004. Of the $900 refund reported as income on the federal return, Individual A will be allowed a $400 ($2,000 - $1,600) reduction on the Iowa return for 2004.

This rule is intended to implement Iowa Code section 422.9.

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◊ Two or more ARCs

CHAPTER 42
ADJUSTMENTS TO COMPUTED TAX
[Prior to 12/17/86, Revenue Department[730]]

701—42.1(257,442) School district surtax. Iowa law provides for the implementation of an income surtax for increasing local school district budgets. The surtax must be approved by the voters of a school district in a special election or by a resolution of the board of directors of a school district. The surtax rate is determined by the department of management on the basis of the revenue to be raised by the surtax for the particular school district with the surtax.

The school district surtax is imposed on the income tax liabilities of all taxpayers residing in the school district on the last day of the taxpayers' tax years. For purposes of the school district surtax, income tax liability is the tax computed under Iowa Code section 422.5, less the nonrefundable credits against computed tax which are authorized in Iowa Code chapter 422, division II.

In a situation where an individual is residing in a school district with a surtax and the individual dies during the tax year, the individual will be considered to be subject to the surtax, since the individual was residing in the school district on the last day of the individual's tax year.

An individual serving in the Armed Forces of the United States who maintains permanent residence in an Iowa school district with a surtax is subject to the surtax regardless of whether the individual is physically residing in the school district on the last day of the tax year.

A person who is present in the school district on the last day of the tax year on a temporary basis due to annual leave or in transit between duty stations is not subject to the surtax.

This rule is intended to implement Iowa Code sections 257.21, 257.29, 298.2, and 422.15.

701—42.2(422) Exemption, research activities, earned income, and investment tax credits.

42.2(1) *Exemption credits for tax years beginning on or after January 1, 1998.*

a. A single person shall deduct from the computed tax a personal exemption credit of $40. A single person is defined in 701—subrule 39.4(1).

b. A married person living with husband or wife at the close of the taxable year, or living with husband or wife at the time of the death of that spouse during the taxable year, shall, if a joint return is filed, deduct from the computed tax a personal exemption of $80. Where such spouse files a separate return, each spouse is entitled to deduct from the computed tax a personal exemption of $40. The personal exemption may not be divided between the spouses in any other proportion.

c. A taxpayer shall deduct from computed tax an exemption of $40 for each dependent. "Dependent" has the same meaning as provided by the Internal Revenue Code, and the same dependents shall be claimed for Iowa income tax purposes as the taxpayer is entitled to claim for federal income tax purposes. If each spouse furnished 50 percent of the support, the spouses must elect between them which spouse is to be entitled to claim the dependent. The dividing of dependent credits applies only to the number of dependents and not to the money credits for a particular dependent.

d. A head of household as defined in 701—subrule 39.4(7) is allowed a personal exemption credit of $80.

e. A taxpayer who is 65 years of age on or before the first day following the end of the tax year is allowed an additional personal exemption credit of $20 in addition to any other credits allowed by this rule.

f. A taxpayer who is blind as defined in Iowa Code section 422.12(1)*"e,"* is allowed a personal exemption credit of $20 in addition to any other credits allowed by this rule.

g. A nonresident taxpayer or a part-year resident taxpayer will be allowed to deduct personal exemption credits as if the nonresident taxpayer or part-year taxpayer was a resident for the entire year.

42.2(2) to **42.2(5)** Rescinded IAB 11/24/04, effective 12/29/04.

42.2(6) *Research activities credit.* Effective for tax years beginning on or after January 1, 1985, taxpayers are allowed a credit equal to 6½ percent of the state's apportioned share of qualified expenditures for increasing research activities. Effective for tax years beginning on or after January 1, 1991, the state research activities credit will be computed on the basis of the qualifying expenditures

for increasing research activities as allowable under Section 41 of the Internal Revenue Code in effect on January 1, 1999. The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in Iowa to the total qualified research expenditures. The Iowa research activities credit is made permanent for tax years beginning on or after January 1, 1991, even though there may no longer be a research activities credit for federal income tax purposes.

a. Qualified expenditures in Iowa are:

(1) Wages for qualified research services performed in Iowa.

(2) Cost of supplies used in conducting qualified research in Iowa.

(3) Rental or lease cost of personal property used in Iowa in conducting qualified research. Where personal property is used both within and without Iowa in conducting qualified research, the rental or lease cost must be prorated between Iowa and non-Iowa use by the ratio of days used in Iowa to total days used both within and without Iowa.

(4) Sixty-five percent of contract expenses paid by a corporation to a qualified organization for basic research performed in Iowa.

b. Total qualified expenditures are:

(1) Wages paid for qualified research services performed everywhere.

(2) Cost of supplies used in conducting qualified research everywhere.

(3) Rental or lease cost of personal property used in conducting qualified research everywhere.

(4) Sixty-five percent of contract expenses paid by a corporation to a qualified organization for basic research performed everywhere.

Qualifying expenditures for increasing research activities is the smallest of the amount by which the qualified research expenses for the taxable year exceed the base period research expenses or 50 percent of the qualified research expenses for the taxable year.

Research expenditures for tax years beginning after December 31, 1985, but before January 1, 1987, will qualify for the Iowa credit for increasing research activities to the extent that the credit would be allowable for federal income tax purposes under Section 30 of the Internal Revenue Code as in effect on January 1, 1985.

A taxpayer may claim on the taxpayer's individual income tax return the pro rata share of the credit for qualifying research expenditures incurred in Iowa by a partnership, subchapter S corporation, or estate or trust. The portion of the credit claimed by the individual must be in the same ratio as the individual's pro rata share of the earnings of the partnership, subchapter S corporation, or estate or trust.

Any research credit in excess of the individual's tax liability, less the nonrefundable credits authorized in Iowa Code chapter 422, division II, may be refunded to the taxpayer or may be credited to the estimated tax of the taxpayer for the following year.

42.2(7) *New jobs credit.* A tax credit is available to an individual who has entered into an agreement under Iowa Code chapter 260E and has increased employment by at least 10 percent.

a. Definitions.

(1) The term *"new jobs"* means those jobs directly resulting from a project covered by an agreement authorized by Iowa Code chapter 260E (Iowa Industrial New Jobs Training Act) but does not include jobs of recalled workers or replacement jobs or other jobs that formerly existed in the industry in the state.

(2) The term *"jobs directly related to new jobs"* means those jobs which directly support the new jobs but does not include instate employees transferred to a position which would be considered to be a job directly related to new jobs unless the transferred employee's vacant position is filled by a new employee.

EXAMPLE A. A taxpayer who has entered into a chapter 260E agreement to train new employees for a new product line, transfers an instate employee to be foreman of the new product line but does not fill the transferred employee's position. The new foreman's position would not be considered a job directly related to new jobs even though it directly supports the new jobs because the transferred employee's old position was not refilled.

EXAMPLE B. A taxpayer who has entered into a chapter 260E agreement to train new employees for a new product line transfers an instate employee to be foreman of the new product line and fills the transferred employee's position with a new employee. The new foreman's position would be considered a job directly related to new jobs because it directly supports the new jobs and the transferred employee's old position was filled by a new employee.

The burden of proof that a job is directly related to new jobs is on the taxpayer.

(3) The term *"taxable wages"* means those wages upon which an employer is required to contribute to the state unemployment fund as defined in Iowa Code subsection 96.19(37) for the year in which the taxpayer elects to take the new jobs tax credit. For fiscal year taxpayers, "taxable wages" shall not be greater than the maximum wage upon which an employer is required to contribute to the state unemployment fund for the calendar year in which the taxpayer's fiscal year begins.

(4) The term *"agreement"* means an agreement entered into under Iowa Code chapter 260E after July 1, 1985, an amendment to that agreement, or an amendment to an agreement entered into before July 1, 1985, if the amendment sets forth the base employment level as of the date of the amendment. The term "agreement" also includes a preliminary agreement entered into under Iowa Code chapter 260E provided the preliminary agreement contains all the elements of a contract and includes the necessary elements and commitments relating to training programs and new jobs.

(5) The term *"base employment level"* means the number of full-time jobs an industry employs at a plant site which is covered by an agreement under Iowa Code chapter 260E on the date of the agreement.

(6) The term *"project"* means a training arrangement which is the subject of an agreement entered into under Iowa Code chapter 260E.

(7) The term *"industry"* means a business engaged in interstate or intrastate commerce for the purpose of manufacturing, processing, or assembling products, conducting research and development, or providing services in interstate commerce, but excludes retail, health or professional services. Industry does not include a business which closes or substantially reduces its operations in one area of the state and relocates substantially the same operation in another area of the state. Industry is a business engaged in the above listed activities rather than the generic definition encompassing all businesses in the state engaged in the same activities. For example, in the meat-packing business, an industry is considered to be a single corporate entity or operating division, rather than the entire meat-packing business in the state.

(8) The term *"new employees"* means the same as new jobs or jobs directly related to new jobs.

(9) The term *"full-time job"* means any of the following:

1. An employment position requiring an average work week of 35 or more hours;

2. An employment position for which compensation is paid on a salaried full-time basis without regard to hours worked; or

3. An aggregation of any number of part-time or job-sharing employment positions which equal one full-time employment position. For purposes of this subrule each part-time or job-sharing employment position shall be categorized with regard to the average number of hours worked each week as one-quarter, half, three-quarters, or full-time position, as set forth in the following table:

Average Number of Weekly Hours	Category
More than 0 but less than 15	¼
15 or more but less than 25	½
25 or more but less than 35	¾
35 or more	1 (full-time)

b. How to compute the credit. The credit is 6 percent of the taxable wages paid to employees in new jobs or jobs directly related to new jobs for the taxable year in which the taxpayer elects to take the credit.

EXAMPLE 1. A taxpayer enters into an agreement to increase employment by 20 new employees which is greater than 10 percent of the taxpayer's base employment level of 100 employees. In year one of the agreement the taxpayer hires 20 new employees but elects not to take the credit in that year. In

year two of the agreement only 18 of the new employees hired in year one are still employed and the taxpayer elects to take the credit. The credit would be 6 percent of the taxable wages of the 18 remaining new employees. In year three of the agreement the taxpayer hires two additional new employees under the agreement to replace the two employees that left in year two and elects to take the credit. The credit would be 6 percent of the taxable wages paid to the two replacement employees. In year four of the agreement three of the employees for which a credit had been taken left employment and three additional employees were hired. No credit is available for these employees. A credit can only be taken one time for each new job or job directly related to a new job.

EXAMPLE 2. A taxpayer operating two plants in Iowa enters into a chapter 260E agreement to train new employees for a new product line at one of the taxpayer's plants. The base employment level on the date of the agreement at plant A is 300 and at plant B is 100. Under the agreement 20 new employees will be trained for plant B which is greater than a 10 percent increase of the base employment level for plant B. In the year in which the taxpayer elects to take the credit, the employment level at plant A is 290 and at plant B is 120. The credit would be 6 percent of the wages of 10 new employees at plant B as 10 new jobs were created by the industry in the state. A credit for the remaining 10 employees can be taken if the employment level at plant A increases back to 300 during the period of time that the credit can be taken.

c. When the credit can be taken. The taxpayer may elect to take the credit in any tax year which either begins or ends during the period beginning with the date of the agreement and ending with the date by which the project is to be completed under the agreement. However, the taxpayer may not take the credit until the base employment level has been exceeded by at least 10 percent.

EXAMPLE: A taxpayer enters into an agreement to increase employment from a base employment level of 200 employees to 225 employees. In year one of the agreement the taxpayer hires 20 new employees which is a 10 percent increase over the base employment level but elects not to take the credit. In year two of the agreement two of the new employees leave employment. The taxpayer elects to take the credit which would be 6 percent of the taxable wages of the 18 employees currently employed. In year three the taxpayer hires seven new employees and elects to take the credit. The credit would be 6 percent of the taxable wages of the seven new employees.

A taxpayer may claim on the taxpayer's individual income tax return the pro rata share of the Iowa new jobs credit from a partnership, subchapter S corporation, estate or trust. The portion of the credit claimed by the individual shall be in the same ratio as the individual's pro rata share of the earnings of the partnership, subchapter S corporation, or estate or trust. All partners in a partnership, shareholders in a subchapter S corporation and beneficiaries in an estate or trust shall elect to take the Iowa new jobs credit the same year.

For tax years beginning prior to January 1, 2007, any Iowa new jobs credit in excess of the individual's tax liability less the credits authorized in Iowa Code sections 422.12 and 422.12B may be carried forward for ten years or until it is used, whichever is the earlier. For tax years beginning on or after January 1, 2007, any Iowa new jobs credit in excess of the individual's tax liability less the credits authorized in Iowa Code section 422.12 may be carried forward for ten years or until it is used, whichever is the earlier.

42.2(8) *Tuition and textbooks credit for dependents in grades kindergarten through 12 in Iowa.* For tax years beginning on or after January 1, 1987, but prior to January 1, 1996, individuals who elect the optional standard deduction may claim a tax credit of 5 percent of the qualifying expenditures. For tax years beginning on or after January 1, 1996, all taxpayers, including individuals that have net incomes of $45,000 or more, may claim a tuition and textbook credit of 10 percent of qualifying expenditures. See rule 42.22(422), which provides detailed information on the tuition and textbook credit for tax years beginning on or after January 1, 1998. For purposes of this subrule, the qualifying expenditures for tax years beginning in 1996 and 1997 are the same as would have been eligible for the deduction allowed under 701—subrule 41.5(5) if the qualifying expenditures had been paid in a tax year when the deduction was applicable. All the qualifications, definitions, and criteria in 701—subrule 41.5(5) are equally applicable to the credit for amounts paid for tuition and textbooks for dependents attending grades kindergarten through 12 in Iowa. In the case of married taxpayers who are filing separate returns

or separately on the combined return, the spouses can allocate the credit for tuition and textbooks between them in the same ratio as described in paragraph *"g"* of 701—subrule 41.5(5).

42.2(9) *Earned income credit.*

a. Tax years beginning before January 1, 2007. Effective for tax years beginning on or after January 1, 1990, an individual is allowed a state earned income credit equal to a percentage of the earned income credit to which the taxpayer is entitled on the taxpayer's federal income tax return as authorized in Section 32 of the Internal Revenue Code. The state earned income credit is nonrefundable so the credit may not exceed the remaining income tax liability of the taxpayer after the personal exemption credits and the other nonrefundable credits are deducted. The percentage of the earned income credit for tax years beginning in the 1990 calendar year is 5 percent. The percentage of the earned income credit for tax years beginning on or after January 1, 1991, is 6.5 percent.

For federal income tax purposes, the earned income credit is available for a low-income worker who maintains a household in the United States that is the principal place of abode of the worker and a child or children for more than one-half of the tax year or the worker must have provided a home for the entire tax year for a dependent parent. In addition, the worker must be (1) a married person who files a joint return and is entitled to a dependency exemption for a son or daughter, adopted child or stepchild; (2) a surviving spouse; or (3) an individual who qualifies as a head of household as described in Section 2(b) of the Internal Revenue Code. The federal earned income credit for a taxpayer is determined by computing the taxpayer's earned income on a worksheet provided in the federal income tax return instructions and determining the allowable credit from a table included in the instructions for the 1040 or 1040A. For purposes of the credit, a taxpayer's earned income includes wages, salaries, tips, or other compensation plus net income from self-employment.

In the case of married taxpayers who filed a joint federal return who elect to file separate state returns or separately on the combined return form, the state earned income credit is allocated between the spouses in the ratio that each spouse's earned income relates to the earned income of both spouses.

Nonresidents and part-year residents of Iowa are allowed the same earned income credits as resident taxpayers.

b. Tax years beginning on or after January 1, 2007. Effective for tax years beginning on or after January 1, 2007, an individual is allowed a state earned income credit equal to 7 percent of the earned income credit to which the taxpayer is entitled on the taxpayer's federal income tax return as authorized in Section 32 of the Internal Revenue Code. The state earned income credit is refundable, so the credit may exceed the remaining income tax liability of the taxpayer after the personal exemption credits and other nonrefundable credits are deducted.

In the case of married taxpayers who filed a joint federal return who elect to file separate state returns or separately on the combined return form, the state earned income credit is allocated between the spouses in the ratio that each spouse's earned income relates to the earned income of both spouses.

Nonresidents or part-year residents of Iowa must determine the state earned income tax credit in the ratio of their Iowa source net income to their total source net income. In addition, if nonresidents or part-year residents of Iowa are married and elect to file separate returns or separately on the combined return form, the state earned income credit must be allocated between the spouses in the ratio of each spouse's Iowa source net income to the combined Iowa source net income.

EXAMPLE: A married couple lives in Omaha, Nebraska. One spouse worked in Iowa in 2007 and had wages and other income from Iowa sources of $12,000. That spouse had a federal adjusted gross income from all sources of $15,000. The other spouse had no Iowa source net income and had a federal adjusted gross income from all sources of $10,000. The taxpayers had a federal earned income credit of $2,800.

The federal earned income credit of $2,800 multiplied by 7 percent equals $196. The ratio of Iowa source net income of $12,000 divided by total source net income of $25,000 equals 48 percent. The Iowa earned income tax credit equals $196 multiplied by 48 percent, or $94.

42.2(10) *Investment tax credit.*

a. General rule. An investment tax credit of up to 10 percent of the new investment which is directly related to new jobs created by the location or expansion of an eligible business is available for

businesses approved by the Iowa department of economic development under the new jobs and income program and the enterprise zone program. The new jobs and income program was repealed on July 1, 2005, and has been replaced with the high quality job creation program. See rule 701—42.27(15) for information on the investment tax credit under the high quality job creation program. Any investment tax credit earned by businesses approved under the new jobs and income program prior to July 1, 2005, remains valid, and can be claimed on tax returns filed after July 1, 2005. The credit is available for machinery and equipment or improvements to real property placed in service after May 1, 1994. The credit is to be taken in the year the qualifying asset is placed in service. For business applications received by the Iowa department of economic development on or after July 1, 1999, purchases of real property made in conjunction with the location or expansion of an eligible business, the cost of land and any buildings and structures located on the land will be considered to be new investment which is directly related to new jobs for purposes of determining the amount of new investment upon which an investment tax credit may be taken. For projects approved on or after July 1, 2005, under the enterprise zone program, the investment tax credit will be amortized over a five-year period, as described in subrule 42.27(2).

For eligible businesses approved by the Iowa department of economic development on or after March 17, 2004, certain lease payments made by eligible businesses to a third-party developer will be considered to be new investment for purposes of computing the investment tax credit. The eligible business shall enter into a lease agreement with the third-party developer for a minimum of ten years. The investment tax credit is based on the annual base rent paid to a third-party developer by the eligible business for a period not to exceed ten years. The total costs of the annual base rent payments for the ten-year period cannot exceed the cost of the land and the third-party developer's cost to build or renovate the building used by the eligible business. The annual base rent is defined as the total lease payment less taxes, insurance and operating and maintenance expenses.

Any credit in excess of the tax liability for the tax year may be carried forward seven years or until used, whichever is the earlier.

If the business is a partnership, S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount of the credit claimed by the individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

b. Investment tax credit—value-added agricultural products or biotechnology-related processes. For tax years beginning on or after July 1, 2001, an eligible business whose project primarily involves the production of value-added agricultural products may elect to receive a refund for all or a portion of an unused investment tax credit. For tax years beginning on or after July 1, 2001, but before July 1, 2003, an eligible business includes a cooperative described in Section 521 of the Internal Revenue Code which is not required to file an Iowa corporation income tax return and whose project primarily involves the production of ethanol. For tax years beginning on or after July 1, 2003, an eligible business includes a cooperative described in Section 521 of the Internal Revenue Code which is not required to file an Iowa corporation income tax return. For tax years ending on or after July 1, 2005, an eligible business approved under the enterprise zone program whose project primarily involves biotechnology-related processes may elect to receive a refund for all or a portion of an unused investment tax credit.

Eligible businesses shall apply to the Iowa department of economic development for tax credit certificates between May 1 and May 15 of each fiscal year. Only those businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. The Iowa department of economic development will not issue tax credit certificates for more than $4 million during a fiscal year for this program and eligible businesses described in subrule 42.27(2). If applications are received for more than $4 million, the applicants shall receive certificates for a prorated amount.

The Iowa department of economic development will issue tax credit certificates within a reasonable period of time. Tax credit certificates are valid for the tax year following project completion. The tax credit certificate must be attached to the tax return for the tax year during which the tax credit is claimed. The tax credit certificate shall not be transferred, except for a cooperative described in Section 521 of

the Internal Revenue Code which is required to file an Iowa corporation income tax return and whose project primarily involves the production of ethanol for tax years beginning on or after January 1, 2002, or for a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return for tax years beginning on or after July 1, 2003.

For value-added agricultural projects, for a cooperative that is not required to file an Iowa income tax return because it is exempt from federal income tax, the cooperative must submit a list of its members and the share of each member's interest in the cooperative. The Iowa department of economic development will issue a tax credit certificate to each member on the list.

See subrule 52.10(4) for examples illustrating how this subrule is applied.

For tax years beginning on or after January 1, 2002, but before July 1, 2003, a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return and whose project primarily involves the production of ethanol may elect to transfer all or a portion of its tax credit to its members. For tax years beginning on or after July 1, 2003, a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return may elect to transfer all or a portion of its tax credit to its members. The amount of tax credit transferred and claimed by a member shall be based upon the pro-rata share of the member's earnings in the cooperative. The Iowa department of economic development will issue a tax credit certificate to each member of the cooperative to whom the credit was transferred provided that tax credit certificates which total no more than $4 million are issued during a fiscal year. The tax credit certificate must be attached to the tax return for the tax year during which the tax credit is claimed.

c. *Repayment of credits.* If an eligible business fails to maintain the requirements of the new jobs and income program or the enterprise zone program, the taxpayer may be required to repay all or a portion of the tax incentives taken on Iowa returns. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the tax credits may have expired, the department may proceed to collect the tax incentives forfeited by failure to maintain the requirements of the new jobs and income program or the enterprise zone program because this is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability.

If the eligible business, within five years of purchase, sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which tax credit was claimed under this rule, the income tax liability of the eligible business for the year in which all or part of the property is sold, disposed of, razed, or otherwise rendered unusable shall be increased by one of the following amounts:

(1) One hundred percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within one full year after being placed in service.

(2) Eighty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within two full years after being placed in service.

(3) Sixty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within three full years after being placed in service.

(4) Forty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within four full years after being placed in service.

(5) Twenty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within five full years after being placed in service.

42.2(11) *Research activities credit.* Effective for tax years beginning on or after January 1, 2000, the taxes imposed for individual income tax purposes will be reduced by a tax credit for increasing research activities in this state. See subrule 42.2(6) for the research activities credit that was applicable for individual income tax purposes for tax years beginning on or after January 1, 1985, but prior to January 1, 2000.

a. The credit equals the sum of the following:

(1) Six and one-half percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

(2) Six and one-half percent of the basic research payments determined under Section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities. The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to total qualified research activities.

b. In lieu of the credit computed under paragraph *"a"* of this subrule, a taxpayer may elect to compute the credit amount for qualified research expenses incurred in this state in a manner consistent with the alternative incremental credit described in Section 41(c)(4) of the Internal Revenue Code. The taxpayer may make this election regardless of the method used by the taxpayer on the taxpayer's federal income tax return. The election made under this paragraph is for the tax year and the taxpayer may use another method or this same method for any subsequent tax year. For purposes of this alternative research credit computation, the credit percentages applicable to qualified research expenses described in clauses (i), (ii), and (iii) of Section 41(c)(4)(A) of the Internal Revenue Code are 1.65 percent, 2.20 percent, and 2.75 percent, respectively.

For purposes of this subrule, the terms "base amount," "basic research payment," and "qualified research expense" mean the same as defined for the federal credit for increasing research activities under Section 41 of the Internal Revenue Code, except that, for purposes of the alternative incremental credit described in paragraph *"b"* of this subrule, such amounts are limited to research activities conducted within this state. For purposes of this subrule, "Internal Revenue Code" means the Internal Revenue Code in effect on January 1, 2008.

c. An individual may claim a research activities credit incurred by a partnership, S corporation, limited liability company, estate, or trust electing to have the income of the business entity taxed to the individual. The amount claimed by an individual from the business entity is to be based upon the pro-rata share of the individual's earnings from a partnership, S corporation, estate or trust. Any research credit in excess of the individual's tax liability, less the nonrefundable credits authorized in Iowa Code chapter 422, division II, may be refunded to the individual or may be credited to the individual's tax liability for the following tax year.

d. An eligible business approved under the new jobs and income program prior to July 1, 2005, is eligible for an additional research activities credit as described in 701—subrule 52.7(4). An eligible business approved under the enterprise zone program is eligible for an additional research activities credit as described in 701—subrule 52.7(5).

e. For tax years ending on or after July 1, 2005, for eligible businesses approved under the enterprise zone program and the high quality job creation program, research activities allowable for the Iowa research activities credit include expenses related to the development and deployment of innovative renewable energy generation components manufactured or assembled in Iowa. These expenses are not eligible for the federal credit for increasing research activities. These innovative renewable energy generation components do not include components with more than 200 megawatts in installed effective nameplate capacity. The research activities credit related to renewable energy generation components under the enterprise zone program and the high quality job creation program shall not exceed $1 million in the aggregate.

These expenses are available only for the additional research activities credit set forth in subrule 42.2(11), paragraph *"d,"* for businesses in enterprise zones and the additional research activities credit set forth in subrule 42.27(1) for businesses approved under the high quality job creation program. These expenses are not available for the research activities credit set forth in subrule 42.2(11), paragraphs *"a"* and *"b."*

This rule is intended to implement Iowa Code sections 15.333 and 422.10 and sections 422.11A, 422.12, and 422.12B as amended by 2007 Iowa Acts, Senate File 590.

701—42.3(422) Nonresident and part-year resident credit. For tax years beginning on or after January 1, 1982, an individual who is a nonresident of Iowa for the entire tax year, or an individual who is an Iowa resident for a portion of the tax year, is allowed a credit against the individual's Iowa income tax liability for the Iowa income tax on the portion of the individual's income which was earned outside Iowa while

the person was a nonresident of Iowa. This credit is computed on Schedule IA 126 which is included in the Iowa individual income tax booklet. The following subrules clarify how the nonresident and part-year resident credit is computed for nonresidents of Iowa and taxpayers who are part-year residents of Iowa during the tax year.

42.3(1) *Nonresident/part-year resident credit for nonresidents of Iowa.* A nonresident of Iowa is to complete the Iowa individual return by reporting the individual's total net income, including incomes earned outside Iowa, on the front of the IA 1040 return form similar to the way an Iowa resident completes the return form. A nonresident individual is allowed the same deduction for federal income tax and the same itemized deductions as an Iowa resident taxpayer with identical deductions for these expenditures. Thus, a nonresident with a taxable income of $40,000 would have the same initial Iowa income tax liability as a resident taxpayer with a taxable income of $40,000 before the nonresident/part-year resident credit is computed.

The nonresident/part-year resident credit is computed on Schedule IA 126. The lines referred to in this subrule are from Schedule IA 126 and Form IA 1040 for the 1997 tax year. Similar lines on the schedule and form may apply for subsequent tax years. The individual's Iowa source net income from lines 1 through 25 of the schedule is totaled on line 26 of the schedule. If the nonresident's Iowa source net income is less than $1,000, the taxpayer is not subject to Iowa income tax and is not required to file an Iowa income tax return for the tax year. However, if the Iowa source net income amount is $1,000 or more, the Iowa source net income is then divided by the person's all source net income on line 27 of Schedule IA 126 to determine the percentage of the Iowa net income to all source net income. This Iowa income percentage is inserted on line 28 of the schedule, and this percentage is then subtracted from 100 percent to arrive at the nonresident/part-year resident credit percentage or the percentage of the individual's total income which was earned outside Iowa. The nonresident/part-year resident credit percentage is entered on line 29 of Schedule IA 126. The Iowa income tax on total income from line 43 of the IA 1040 is entered on line 30 of Schedule IA 126. The total of nonrefundable credits from line 50 of the IA 1040 is then shown on line 31 of Schedule IA 126. The amount on line 31 is subtracted from the amount on line 30 which leaves the Iowa total tax after nonrefundable credits on line 32. This Iowa tax after credits amount is multiplied by the nonresident/part-year resident credit percentage from line 29 to compute the nonresident/part-year resident credit. The amount of the credit is inserted on line 33 of Schedule IA 126 and on line 52 of the IA 1040.

EXAMPLE A. A single resident of Nebraska had Iowa source net income of $15,000 in 1997 from wages earned from employment in Iowa. The rest of this person's income was attributable to sources outside Iowa. This nonresident of Iowa had an all source net income of $40,000 and a taxable income of $30,000 due to a federal tax deduction of $7,000 and itemized deductions of $3,000. The Iowa income percentage is computed by dividing the Iowa source net income of $15,000 by the taxpayer's all source net income of $40,000, which results in a percentage of 37.5. This percentage is subtracted from 100 percent which leaves a nonresident/part-year resident credit percentage of 62.5.

The Iowa tax from line 43 of the IA 1040 is $1,789. The total nonrefundable credit from line 50 is $20, which leaves a tax amount of $1,769 when the credit is subtracted from $1,789. When $1,769 is multiplied by the nonresident/part-year resident credit percentage of 62.5 percent, a nonresident credit of $1,106 is computed which is entered on line 33 of Schedule IA 126 as well as on line 52 of the IA 1040 for 1997.

EXAMPLE B. A California resident, who was married, had $20,000 of Iowa source income in 1997 from an Iowa farm. This individual had an additional $80,000 in income that was attributable to sources outside Iowa, but the individual's spouse had no income. The taxpayers had paid $18,000 in federal income tax in 1997 and had itemized deductions of $12,000 in 1997.

The taxpayers' taxable income on their joint Iowa return was $70,000. The taxpayers had an Iowa income tax liability of $5,422 after application of the personal exemption credits of $40. The taxpayers had an Iowa source income of $20,000 and an all source net income of $100,000. Therefore, the Iowa income percentage was 20 percent. Subtracting the Iowa income percentage of 20 percent from 100 percent leaves a nonresident/part-year resident credit percentage of 80 percent.

When the Iowa income tax liability of $5,422 is multiplied by 80 percent, this results in a nonresident/part-year resident credit of $4,338. This credit amount is entered on line 33 of the Schedule IA 126 and on line 52 of Form IA 1040.

42.3(2) *Nonresident/part-year resident credit for part-year residents of Iowa.* An individual who is a resident of Iowa for part of the tax year is to complete the front of the IA 1040 income tax return form as a resident taxpayer by showing the taxpayer's total income, including income earned outside Iowa, on the front of the IA 1040 return form. A part-year resident of Iowa is allowed the same federal tax deduction and itemized deductions as a resident taxpayer who has paid the same amount of federal income tax and has paid for the same deductions that can be claimed on Schedule A in the tax year. Therefore, a part-year resident would have the same initial Iowa income tax liability as an Iowa resident with the same taxable income before computation of the nonresident/part-year resident credit.

The nonresident/part-year resident credit for a part-year resident is computed on Schedule IA 126. The lines referred to in this subrule are from the IA 1040 income tax return form and the Schedule IA 126 for 1997. Similar lines may apply for tax years after 1997. The individual's Iowa source income is totaled on line 26 of this form and includes all the individual's income received while the taxpayer was a resident of Iowa and all the Iowa source income received during the period of the tax year when the individual was a resident of a state other than Iowa. Iowa source income includes, but is not limited to, wages earned in Iowa while a resident of another state as well as incomes from Iowa farms and other Iowa businesses that were earned during the portion of the year that the taxpayer was a nonresident of Iowa. In the case of interest from a part-year resident's account at an Iowa financial institution, only interest earned during the period of the individual's Iowa residence is Iowa source income unless the account is for an Iowa business. If the part-year resident's account at a financial institution is for an Iowa business, all interest earned in the year by the part-year resident from the account is taxable to Iowa.

Income earned outside Iowa by the part-year resident during the portion of the year the individual was an Iowa resident is taxable to Iowa and is part of the individual's Iowa source income. To compute the nonresident/part-year resident credit for a part-year resident, the taxpayer's Iowa source income on Schedule IA 126 is totaled. If the Iowa source income is less than $1,000, the taxpayer is not subject to Iowa income tax and is not required to file an Iowa return. If the Iowa source income is $1,000 or more, it is divided by the taxpayer's all source net income on line 27 of Schedule IA 126. The percentage computed by this procedure is the Iowa income percentage and is entered on line 28 of the IA 126. The Iowa income percentage is then subtracted from 100 percent to arrive at the nonresident/part-year resident credit percentage which is entered on line 29 of Schedule IA 126. The Iowa tax from line 43 of the IA 1040 is then shown on line 30 of Schedule IA 126. The total of the Iowa nonrefundable credits from line 50 of the IA 1040 is entered on line 31 of Schedule IA 126 and is subtracted from the Iowa tax amount on line 30. The tax after credits amount on line 32 is next multiplied by the nonresident/part-year resident credit percentage from line 28. The amount calculated from this procedure is the nonresident/part-year resident credit which is shown on line 33 of Schedule IA 126 and on line 52 of Form IA 1040.

EXAMPLE A. A single individual was a resident of Nebraska for the first half of 1997 and moved to Iowa on July 1, 1997, to accept a job in Des Moines. This individual earned $20,000 from wages, $200 from interest, and $4,000 from a ranch in Nebraska from January 1, 1997, through June 30, 1997. In the last half of 1997, this person had wages of $30,000, interest income of $300, and $4,000 from the Nebraska ranch. This part-year resident had federal income tax paid in 1997 of $11,000 and had itemized deductions of $3,000.

The part-year resident's all source net income was $58,500 and the Iowa source net income was $34,300, which includes the Iowa wages, the Nebraska ranch income of $4,000 earned during the individual's period of Iowa residence, as well as the interest income of $300 earned in that time of the tax year. The Iowa taxable income for the part-year resident for 1997 was $44,500, which considered the federal income tax deduction of $11,000 and itemized deductions of $3,000. The individual's Iowa income percentage was 58.6 which was determined by dividing the Iowa source income of $34,300 by the all source income of $58,500. Subtracting the Iowa income percentage of 58.6 from 100 percent results in a nonresident/part-year resident credit percentage of 41.4 percent. The Iowa tax on total

income was $3,023 which was reduced to $3,003 after subtraction of the personal exemption credit of $20.

When $3,003 is multiplied by the nonresident/part-year resident percentage of 41.4, a nonresident/part-year resident credit of $1,243 is computed for this part-year resident.

EXAMPLE B. A single individual moved from Minnesota to Iowa on July 1, 1997. This person had received $5,000 in income from an Iowa farm in March of the tax year and another $10,000 from this farm in September of 1997. This person had $10,000 in wages from employment in Minnesota in the first half of the year and another $15,000 in wages from employment in Iowa in the last half of 1997. This person had $2,000 in interest from a Minnesota bank in the first half of the year and $2,000 in interest from an Iowa bank in the last six months of 1997. This taxpayer had $8,000 in federal income tax withheld from wages in 1997 and claimed the standard deduction on both the Iowa and federal income tax returns.

The part-year resident's all source income was $44,000 and the Iowa source income was $32,000 which consisted of $15,000 in wages, $2,000 in interest income, and $15,000 in income from the Iowa farm. Since the farm was in Iowa, the farm income received in the first half of 1997 was taxable to Iowa as well as the farm income received while the individual was an Iowa resident. The individual's Iowa taxable income was $34,590 which was computed after subtracting the federal income tax deduction of $8,000 and a standard deduction of $1,410. The taxpayer's Iowa income tax liability was $2,132 after subtraction of a personal exemption credit of $20.

The taxpayer's Iowa income percentage was 72.7 percent which was computed by dividing the Iowa source income of $32,000 by the all source income of $44,000. The nonresident/part-year resident credit percentage was 27.3 percent which was arrived at by subtracting the Iowa income percentage of 72.7 percent from 100 percent. The taxpayer's nonresident/part-year resident credit is $582. This was determined by multiplying the Iowa income tax liability after personal exemption credit amount of $2,132 by the nonresident/part-year resident percentage of 27.3 percent.

This rule is intended to implement Iowa Code section 422.5.

701—42.4(422) Out-of-state tax credits.

42.4(1) *General rule.* Iowa residents are allowed an out-of-state tax credit for taxes paid to another state or foreign country on income which is also reported on the taxpayer's Iowa return. The out-of-state tax credit is allowable only if the taxpayer files an Iowa resident income tax return.

If the Iowa resident is a partner, shareholder, member, or beneficiary of a partnership, S corporation, limited liability company, or trust which files a composite income tax return in another state on behalf of the partners, shareholders, members or beneficiaries, the out-of-state tax credit will be allowed for the Iowa resident. The Iowa resident must provide a schedule of the resident's share of the income tax paid to another state on a composite basis, and the out-of-state tax credit is limited based upon the calculation set forth in subrule 42.4(2).

However, if the partnership, S corporation, limited liability company or trust is directly subject to tax in another state and the tax is not directly imposed on the resident taxpayer, then the out-of-state tax credit is not allowed for the Iowa resident on the tax directly imposed on the partnership, S corporation, limited liability company, or trust. For example, if another state does not recognize the S corporation election for state purposes and a corporation income tax is imposed directly on the S corporation, then the out-of-state tax credit is not allowed for the Iowa resident shareholder on the corporation income tax paid to the other state.

42.4(2) *Limitation of out-of-state tax credit.* If an Iowa resident taxpayer pays income tax to another state or foreign country on any of the taxpayer's income, the taxpayer is entitled to a net tax credit; that is, the taxpayer may deduct from the taxpayer's Iowa net tax (not from gross income) the amount of income tax actually paid to the other state or country, provided the amount deducted as a credit does not exceed the amount of Iowa net income tax on the same income which was taxed by the other state or foreign country.

42.4(3) *Computation of tax credit.*

a. For tax years beginning on or after January 1, 1983. The limitation on the tax credit must be computed according to the following formula: Gross income taxed by another state or foreign country that is also taxed by Iowa shall be divided by the total gross income of the Iowa resident taxpayer. Said quotient multiplied by the net Iowa tax as determined on the total gross income of the taxpayer as if entirely earned in Iowa shall be the maximum tax credit against the Iowa net tax. This quotient should be computed as a percentage with a minimum of one decimal place. However, if the income tax paid to the other state or foreign country on the gross income taxed by the other state or foreign country is less than the maximum tax credit against the Iowa tax, the out-of-state credit allowed against the Iowa tax may not exceed the income tax paid to the other state or foreign country. The income tax paid to the other state or foreign country is the net state or foreign income tax actually paid for the tax year on the income taxed by the other state or foreign country and not the state or foreign income tax paid during the tax year, such as state income tax or foreign income tax withheld from the income taxed by the other state or foreign country.

b. Out-of-state tax credit examples. An individual who is an Iowa resident for the entire tax year can claim an out-of-state tax credit against the person's Iowa income tax liability for any income tax paid to another state or foreign country for the tax year on any gross income received by the individual for the year which was derived from sources outside of Iowa to the extent this gross income is also subject to Iowa income tax.

However, in the case of an individual who is a part-year resident of Iowa for the tax year, that individual can only claim an out-of-state tax credit against the person's Iowa income tax liability for income tax paid to another state or foreign country on gross income derived from sources outside of Iowa during the period of the tax year that the individual was an Iowa resident and only to the extent this gross income derived from sources outside of Iowa was also subject to Iowa income tax.

The taxpayer's out-of-state credit is computed on Schedule IA 130 which is to be filed with the taxpayer's Iowa individual income tax return. The taxpayer's income tax return or other document of the other state or foreign country supporting the income tax paid to the other state or foreign country shall be filed with the individual's Iowa income tax return to support the out-of-state tax credit claimed.

EXAMPLE 1. Gene Miller was an Iowa resident for the entire year 2002. Mr. Miller lived in Council Bluffs and worked the entire year for a company in Omaha, Nebraska. Mr. Miller had wages of $30,000 and Nebraska income tax withheld of $1,000. He also had income of $10,000 from rental of an Iowa farm and another $10,000 in interest income from a personal savings account in an Iowa bank. The amount of Mr. Miller's gross income that was taxed by Nebraska (the other state or foreign country) was $30,000. His total gross income in 2002 was $50,000. Thus, 60 percent of his income was earned in Nebraska. Mr. Miller's Iowa tax on line 55 of Form IA 1040 was $917, which resulted in a potential out-of-state credit of 60 percent of the Iowa tax or $550 because 60 percent of Mr. Miller's income was earned outside Iowa and was taxed by Nebraska. However, Mr. Miller's income tax liability on the Nebraska income tax return was only $500. Thus, the out-of-state tax credit allowed was $500, because that was less than the potential out-of-state tax credit of $550.

EXAMPLE 2. Ben Smith was a part-year Iowa resident in 2002. He resided in Missouri for the first six months of the year until he moved to Keokuk, Iowa, on July 1. Mr. Smith was employed in Missouri for the entire year and had wages of $30,000 and had Missouri income tax liability of $1,000. Half of Mr. Smith's wages or $15,000 of the wages was earned during the time Mr. Smith was an Iowa resident. Mr. Smith also had $10,000 in farm rental income from farmland located in Iowa. The amount of gross income taxed by Missouri while Mr. Smith was an Iowa resident was $15,000. Mr. Smith's gross income earned while an Iowa resident for the year was $25,000. Thus, 60 percent of the gross income was earned in the other state while Mr. Smith was an Iowa resident. Mr. Smith's Iowa income tax on line 55 of the IA 1040 was $1,292. This resulted in a potential out-of-state credit of $775 because 60 percent of the gross income was earned in Missouri during the period Mr. Smith was an Iowa resident. However, since 50 percent of the income earned in Missouri was earned while Mr. Smith was a resident of Iowa and the Missouri income tax liability for the year was $1,000, the out-of-state credit was $500 or 50 percent of the Missouri income tax liability. The out-of-state credit allowed was $500, because this was less than

the Iowa income tax of $775 that was applicable to the gross income earned in Missouri during the period Mr. Smith was an Iowa resident.

42.4(4) *Proof of claim for tax credit.* The credit may be deducted from Iowa net income tax if written proof of such payment to another state or foreign country is furnished to the department. The department will accept any one of the following as proof of such payment:

a. A photocopy, or other similar reproduction of either

(1) The receipt issued by the other state or foreign country for payment of the tax, or

(2) The canceled check (both sides) with which the tax was paid to the other state or foreign country together with a statement of the amount and kind (that is, whether wages, salaries, property or business) of total income on which such tax was paid.

b. A copy of the income tax return filed with the other state or foreign country which has been certified by the tax authority of that state or foreign country and showing thereon that the income tax assessed has been paid to them.

This rule is intended to implement Iowa Code section 422.8.

701—42.5(422) Withholding and estimated tax credits. An employee from whose wages tax is withheld shall claim credit for the tax withheld on the employee's income tax return for the year during which the tax was withheld. Credit will be allowed only if a copy of the withholding statement is attached to the return. Taxpayers who have made estimated income tax payments shall claim credit for the estimated tax paid for the taxable year.

This rule is intended to implement Iowa Code section 422.16.

701—42.6(422) Motor fuel credit. An individual, partnership, limited liability company, or S corporation may elect to receive an income tax credit in lieu of the motor fuel tax refund provided by Iowa Code chapter 452A. An individual, partnership, limited liability company, or S corporation which holds a motor fuel tax refund permit under Iowa Code section 452A.18 when it makes this election must cancel the permit within 30 days after the first day of the tax year. However, if the refund permit is not canceled within this period, the permit becomes invalid at the time the election to receive an income tax credit is made. The election will continue for subsequent tax years unless a new motor fuel tax refund permit is obtained.

The motor fuel income tax credit must be the amount of Iowa motor fuel tax paid on qualifying fuel purchases as determined by Iowa Code chapter 452A and Iowa Code section 422.110 less any state sales tax as determined by 701—subrule 231.2(2). The credit must be claimed on the tax return covering the tax year in which the motor fuel tax was paid. If the motor fuel credit results in an overpayment of income tax, the overpayment may be refunded or may be credited to income tax due in the subsequent tax year.

The motor fuel tax credits for fuel taxes paid by partnerships, limited liability companies, and S corporations are not claimed on returns filed for the partnerships, limited liability companies, and S corporations. Instead, the pro rata shares of the motor fuel tax credits are allocated to the partners, members, and shareholders in the same ratio as incomes are allocated to the partners, members, and shareholders. A schedule must be attached to the individual's returns showing the distribution of gallons and the amount of credit claimed by each partner, member, or shareholder.

The partnership, limited liability company, or S corporation must attach to its return a schedule showing the allocation to each partner, member, or shareholder of the motor fuel purchased by the partnership, limited liability company, or S corporation which qualifies for the credit.

This rule is intended to implement Iowa Code sections 422.110 and 422.111.

701—42.7(422) Out-of-state tax credit for minimum tax.

42.7(1) *General rule.* Iowa residents are allowed an out-of-state tax credit for minimum taxes or income taxes paid to another state or foreign country on preference items derived from sources outside of Iowa. Part-year residents who pay minimum tax to another state or foreign country on preference items derived from sources outside Iowa will be allowed an out-of-state tax credit only to the extent

that the minimum tax paid to the other state or foreign country relates to preference items that occurred during the period the taxpayer was an Iowa resident. Taxpayers who were nonresidents of Iowa for the entire tax year are not eligible for an out-of-state tax credit on their Iowa returns for minimum taxes paid to another state or foreign country on preference items.

If the Iowa resident is a partner, shareholder, member, or beneficiary of a partnership, S corporation, limited liability company, or trust which files a composite income tax return and pays minimum tax in another state on behalf of the partners, shareholders, members or beneficiaries, the out-of-state tax credit will be allowed for the Iowa resident. The Iowa resident must provide a schedule of the resident's share of the minimum tax paid to another state on a composite basis, and the out-of-state tax credit is limited based upon the calculation set forth in subrule 42.7(2).

However, if the partnership, S corporation, limited liability company, or trust is directly subject to minimum tax in another state and the minimum tax is not directly imposed on the resident taxpayer, then the out-of-state tax credit is not allowed for the Iowa resident on the minimum tax directly imposed on the partnership, S corporation, limited liability company, or trust. For example, if another state does not recognize the S corporation election for state purposes and a corporation income tax is imposed directly on the S corporation which includes minimum tax, then the out-of-state tax credit is now allowed for the Iowa resident shareholder on the corporation income tax, including minimum tax, paid to the other state.

42.7(2) *Limitations of out-of-state tax credit for minimum tax.* The limitation on the out-of-state tax credit for minimum tax is that the credit shall not exceed the Iowa minimum tax that would have been computed on the same preference items which were taxed by the other state or foreign country. The limitation may be determined according to the following formula: The total of preference items earned outside of Iowa and taxed by another state or foreign country shall be divided by the total of preference items of the resident taxpayer. This quotient multiplied times the state minimum tax on the total of preference items as if entirely earned in Iowa shall be the maximum credit against the Iowa minimum tax. However, if the minimum tax imposed by the other state or foreign country is less than the minimum tax computed under the limitation formula, the out-of-state credit for minimum tax will not exceed the minimum tax imposed by the other state or foreign country.

No out-of-state credit will be allowed on the Iowa return for minimum tax paid to another state or foreign country to the extent that the minimum tax of the other state or foreign country is imposed on items of tax preference not subject to the Iowa minimum tax. In addition, no out-of-state credit will be allowed for minimum tax paid to another state or foreign country of capital gains or losses from distressed sales which are excluded from the Iowa minimum tax. Capital gains or losses from distressed sales are described in rule 701—40.27(422).

42.7(3) *Proof of claim for tax credit for minimum tax.* The out-of-state credit for minimum tax may be claimed on the return of a taxpayer if proof of payment of minimum tax to the state or foreign country is included with the return. Documents needed for proof of payment are a photocopy of the minimum tax form of the state or country to which minimum tax was paid as well as instructions from the minimum tax form or other information which specifies how the minimum tax is imposed and what preference items are subject to the minimum tax of that state or foreign country.

In the case of audit by the department of a taxpayer claiming an out-of-state tax credit for minimum tax paid, the department may require additional proof of payment of the out-of-state tax credit. The department will accept any of the following documents as verification of payment of the minimum tax:

a. A photocopy, or other similar reproduction of either

(1) The receipt issued by the other state or foreign country for payment of the tax, including the minimum tax or

(2) The canceled check (both sides) which was used for payment of the minimum tax to the other state or foreign country.

b. A copy of the return filed with the other state or foreign country which has been certified by the tax authority of that state or foreign country and which shows that the income tax, including the minimum tax, has been paid.

This rule is intended to implement Iowa Code section 422.8.

701—42.8(422) Alternative minimum tax credit for minimum tax paid in a prior tax year. Minimum tax paid in prior tax years commencing with tax years beginning on or after January 1, 1987, by a taxpayer can be claimed as a tax credit against the taxpayer's regular income tax liability in a subsequent tax year. Therefore, 1988 is the first tax year that the minimum tax credit is available and the credit is based on the minimum tax paid by the taxpayer for 1987. However, only the portion of the minimum tax which is attributable to those adjustments and tax preferences which are "deferral items" qualifies for the minimum tax credit for tax years beginning before January 1, 1993. "Deferral items" are those tax preferences and adjustments which result in a temporary change in an individual's tax liability. An example of a "deferral item" is the tax preference for accelerated depreciation of real property placed in service before 1987. On the other hand, the portion of the minimum tax which is attributable to the "exclusion item" for appreciated property charitable deduction does not qualify for the minimum tax credit. The appreciated property charitable deduction tax preference is the only state "exclusion item," although there are several "exclusion items" which are used to compute federal minimum tax. For tax years beginning on or after January 1, 1993, the entire amount of minimum tax paid qualifies for the minimum tax credit, and there is no longer any distinction between "deferral items" and "exclusion items" for Iowa minimum tax purposes. The minimum tax credit may only be used against regular income tax for a tax year to the extent that the regular tax is greater than the minimum tax for the tax year. If the minimum tax credit is not used against the regular tax for a tax year, the remaining credit is carried to the following tax year to be applied against the regular income tax liability for that period.

42.8(1) *Computation of minimum tax credit on Form IA 8801.* The minimum tax credit is computed on Form IA 8801 from information on Form IA 6251 for the prior tax year, Form IA 1040 and Form IA 6251 for the current year and from Form IA 8801 for the prior year (applies in 1989 and in subsequent tax years).

Form IA 8801 is in three parts. In the first part, a calculation is made to determine the portion of the minimum tax paid in the prior year, if any, which is attributable to the exclusion item for appreciated property charitable deduction. In the second portion of Form IA 8801, the minimum tax attributable to the appreciated property charitable deduction from Part I is subtracted from the total minimum tax paid for the prior year. The remaining amount of minimum tax is attributable to the deferral tax preference items and adjustment items. This remaining amount, if any, is added to the minimum tax carryover credit from the IA 8801 for the prior tax year, if any. This total is compared to the regular income tax liability less nonrefundable credits, less the tentative minimum tax for the current year and the lesser amount is the allowable minimum tax credit for the current year.

The final part of Form IA 8801 is used to compute the minimum tax credit, if any, which will be carried over to the next tax year. The carryover credit is computed by subtracting the allowable credit for the current tax year from the total of the minimum tax credit attributable to deferral items and the carryover credit from the prior tax year.

42.8(2) *Examples of computation of the minimum tax credit and carryover of the credit.*

EXAMPLE 1. Taxpayers are married with no dependents and are filing a joint Iowa return for 1989, with a taxable income of $200,000. In 1988, the taxpayers had a taxable income of $100,000. They had $575,000 in tax preference in 1988. They had incentive stock options of $475,000 and appreciated property charitable deduction of $100,000. The taxpayers' regular income tax liability in 1988 after personal exemption credits was $8,608. The taxpayers had a minimum tax carryover credit of $5,000 from minimum tax paid in 1987 that was not applied against the regular tax liability in 1988. The minimum tax credit for 1989 was computed on Form IA 8801 using data from IA 6251 for 1988, IA 8801 for 1988, IA 6251 for 1989 and IA 1040 for 1989. Selected lines from this form are shown below:

Form IA 8801

Part I.		Computation of Minimum Tax on Exclusion Items	
Line 10	-	Gross tax on exclusion items.	$13,313
Line 11	-	Less regular income tax minus credits (line 12 IA 6251 - 1988).	8,608
Line 12	-	Net minimum tax on exclusion item.	$ 4,705
Part II.		Computation of Allowable Credit for 1989	
Line 13	-	Enter amount from line 13 IA 6251 for 1988.	$42,017
Line 14	-	Enter amount from line 12 in Part I.	4,705
Line 15	-	Adjusted net minimum tax. Subtract amount on line 14 from amount on line 13.	$37,312
Line 16	-	Enter credit carryforward for 1987.	5,000
Line 17	-	Total Add lines 15 and 16.	$42,312
Line 18	-	Enter 1989 regular tax liability minus allowable credits. Line 46 less line 53 of IA 1040.	$18,588
Line 19	-	Enter tentative minimum tax for 1989 from line 13 of IA 6251 for 1989.	0
Line 20	-	Subtract line 19 from line 18.	$18,588
Line 21	-	Allowable minimum tax credit for 1989. Enter smaller of line 17 or line 20.	$18,588
Part III.		Computation of Minimum Tax Credit Carryover	
Line 22	-	Enter amount from line 17 in Part II.	$42,312
Line 23	-	Enter amount from line 21 in Part II.	18,588
Line 24	-	Carryforward of credit to next tax year, subtract line 23 from line 22.	$23,724

EXAMPLE 2. All of the facts are the same as in Example 1 except that the taxpayers did not have the exclusion preference for appreciated property charitable deduction. Instead, the taxpayer had incentive stock options of $575,000 as compared to stock options of $475,000 in the prior example. If there were no exclusion tax preference items, the totals on lines 12 and 14 of IA 8801 would be zero. The total on line 15 would be $42,017 and the total on line 17 would be $47,017 ($42,017 + $5,000). The allowable minimum tax credit on line 21 would be the same as in Example 1 ($18,588). The amount on line 22 would be $47,017 ($42,017 + $5,000). The carryover credit is $28,429 ($47,017 – $18,588).

EXAMPLE 3. The taxpayers have a minimum tax credit carryforward from the 1988 tax year of $5,000. The taxpayers did not have any minimum tax in 1988. For 1989, the taxpayers regular tax less credits is $3,000 and the minimum tax liability is $2,000. Selected lines from Form IA 8801 follow, which show the allowable minimum tax credit for the taxpayers:

Line 17	-	Total of available minimum tax credit.	$5,000
Line 18	-	1989 Regular tax liability minus credits.	3,000
Line 19	-	Tentative minimum tax liability for 1989.	2,000
Line 20	-	Subtract line 19 from line 18.	$1,000
Line 21	-	Allowable minimum tax credit which is the smaller of line 17 or line 20.	$1,000

The minimum tax credit is $1,000 because although the taxpayers had a $3,000 regular tax liability, the credit is allowed only to the extent that the regular tax exceeds the minimum tax. Since only $1,000 of the carryover credit from 1988 was used, there is a $4,000 carryover credit to 1990.

42.8(3) *Minimum tax credit for nonresidents and part-year residents.* Nonresident and part-year resident taxpayers who paid Iowa minimum tax in tax years beginning on or after January 1, 1987, are eligible for the minimum tax credit to the extent that the minimum tax they paid was attributable to tax preferences and adjustments other than the exclusion tax preference for appreciated property charitable deduction. Therefore, if a nonresident or part-year resident taxpayer had Iowa source tax preferences or adjustments, but no Iowa source tax preference for appreciated property charitable deduction, then

all the minimum tax that was paid would qualify for the minimum tax credit. On the other hand, if the only Iowa source tax preference of a nonresident or part-year resident taxpayer was the tax preference for appreciated property charitable deduction, no portion of the minimum tax paid for the tax year would qualify for the minimum tax credit. The following formula can be used to compute the minimum tax credit for a nonresident or part-year resident where a portion of the minimum tax is attributable to the tax preference for appreciated property charitable deduction.

Minimum tax		*Iowa source tax pref.		Minimum
(line 17	×	and adjustments	=	tax credit
IA 6251)		*Total tax preference		line 15
1988		and adjustments		IA 8801

*Excluding amount of tax preference for appreciated charitable deduction

The minimum tax credit for a tax year as computed above applied to the regular income tax liability less credits including the nonresident part-year credit to the extent this regular tax amount exceeds the minimum tax for the tax year. To the extent the credit is not used the credit can be carried over to the next tax year.

This rule is intended to implement Iowa Code section 422.11B.

701—42.9(422) Child and dependent care credit. Effective for tax years beginning on or after January 1, 1990, there is a child and dependent care credit which is refundable to the extent the amount of the credit exceeds the taxpayer's income tax liability less other applicable income tax credits.

42.9(1) *Computation of the child and dependent care credit.* The child and dependent care credit is computed as a percentage of the child and dependent care credit which is allowed for federal income tax purposes under Section 21 of the Internal Revenue Code. The credit is computed so that taxpayers with lower adjusted gross incomes (net incomes in tax years beginning on or after January 1, 1991) are allowed higher percentages of their federal child care credit than taxpayers with higher adjusted gross incomes (net incomes). The following is a schedule showing the percentages of federal child and dependent credits allowed on the taxpayers' state returns on the basis of the federal adjusted gross incomes (or net incomes) of the taxpayers for tax years beginning on or after January 1, 1993.

*Federal Adjusted Gross Income (Net Income for Tax Years Beginning on or After January 1, 1993)	Percentage of Federal Child and Dependent Credit Allowed for 1993 through 2005 Iowa Returns	Percentage of Federal Credit Allowed for 2006 and Later Tax Years
Less than $10,000	75%	75%
$10,000 or more but less than $20,000	65%	65%
$20,000 or more but less than $25,000	55%	55%
$25,000 or more but less than $35,000	50%	50%
$35,000 or more but less than $40,000	40%	40%
$40,000 or more but less than $45,000	No Credit	30%
$45,000 or more but less than $50,000	No Credit	No Credit
$50,000 or more	No Credit	No Credit

*Note that in the case of married taxpayers who have filed joint federal returns and elect to file separate returns or separately on the combined return form, the taxpayers must determine the child and dependent care credit by the schedule provided in this rule on the basis of the combined federal adjusted gross income of the taxpayers or their combined net income for tax years beginning on or after January 1, 1991. The credit determined from the schedule must be allocated between the married taxpayers in the proportion that each spouse's federal adjusted gross income relates to the combined federal adjusted

gross income of the taxpayers or in the proportion that each spouse's net income relates to the combined net income of the taxpayers in the case of tax years beginning on or after January 1, 1991.

42.9(2) *Examples of computation of the state child and dependent care credit.* The following are examples of computation of the child and dependent care credit and the allocation of the credit between spouses in situations where married taxpayers have filed joint federal returns and are filing separate state returns or separately on the combined return form. Note that in the case of 1990 returns, taxpayers' federal adjusted gross incomes are used to compute the Iowa child and dependent credit and to allocate the credit between spouses. However, in the case of returns for tax years beginning on or after January 1, 1991, the taxpayers' net incomes are used to compute the Iowa child and dependent care credit and allocate the credit between spouses in situations where the taxpayers file separate state returns or separately on the combined return form:

EXAMPLE A. A married couple has filed a joint federal return on which they showed a federal adjusted gross income of $40,000 or a combined net income of $40,000 on their state return for tax years beginning on or after January 1, 1991. Both spouses were employed. They had a federal child and dependent care credit of $600 which related to expenses incurred for care of their two small children. One of the spouses had a federal adjusted gross income of $30,000 or a net income of $30,000 and the second spouse had a federal adjusted gross income of $10,000 or a net income of $10,000.

The taxpayers' Iowa child and dependent care credit was $180 since they were entitled to an Iowa child and dependent care credit of 30 percent of their federal credit of $600. If the taxpayers elect to file separate Iowa returns, the $180 credit would be allocated between the spouses on the basis of each spouse's net income (federal adjusted gross income for 1990) to the combined net income (federal adjusted gross income for 1990) of both spouses as shown below:

$$\$180 \times \frac{\$30{,}000}{\$40{,}000} = \$135$$ child and dependent care credit for spouse with $30,000 adjusted gross income or net income for 1991 and 1992 tax years.

$$\$180 \times \frac{\$10{,}000}{\$40{,}000} = \$45$$ child and dependent care credit for spouse with $10,000 adjusted gross income or net income for 1991 and 1992 tax years.

Note that for tax years beginning on or after January 1, 1993, the taxpayers are not eligible for an Iowa child and dependent care credit since their combined net income is $40,000 or more.

EXAMPLE B. A married couple has filed a joint federal return with a net income (federal adjusted gross income for 1990) of $60,000. The taxpayers had a federal child and dependent care credit of $960 for care of the couple's three small children which enabled the taxpayers to work. One of the spouses had a net income (federal adjusted gross income for 1990) of $40,000 and the other spouse had a net income (federal adjusted gross income for 1990) of $20,000.

The taxpayers' Iowa child and dependent care credit was $96, since they are allowed an Iowa child and dependent care credit of 10 percent of their federal credit. If the taxpayers elect to file separate Iowa returns or separately on the combined return form, the $96 credit would be allocated between the spouses on the basis of the ratio of each spouse's respective federal adjusted gross income to the combined federal adjusted gross income of both spouses or for the 1991 and 1992 tax years on the basis of each spouse's respective net income to the combined net income of both spouses as shown below:

$$\$96 \times \frac{\$40{,}000}{\$60{,}000} = \$64$$ child and dependent care credit for spouse with $40,000 adjusted gross income or net income of $40,000 in 1991 and 1992.

$$\$96 \times \frac{\$20{,}000}{\$60{,}000} = \$32$$ child and dependent care credit for spouse with $20,000 adjusted gross income or net income of $20,000 in 1991 and 1992.

Note that for tax years beginning on or after January 1, 1993, the taxpayers are not eligible for an Iowa child and dependent care credit because their combined net income is $40,000 or more.

EXAMPLE C. A married couple filed a joint federal return for 1993 and filed their 1993 Iowa return using the married filing separately on the combined return form filing status. Both spouses were employed. They had a federal child and dependent care credit of $800 which related to expenses incurred for care of their children. One spouse had a net income of $25,000 and the other spouse had a net income of $12,500.

The taxpayers' Iowa child and dependent care credit was $320, since they were entitled to an Iowa credit of 40 percent of their federal credit of $800. The $320 credit is allocated between the spouses on the basis of each spouse's net income to the combined net income of both spouses as shown below:

$$\$320 \times \frac{\$25{,}000}{\$37{,}500} = \$213$$ child and dependent care credit for spouse with net income of $25,000 for 1993.

$$\$320 \times \frac{\$12{,}500}{\$37{,}500} = \$107$$ child and dependent care credit for spouse with net income of $12,500 for 1993.

42.9(3) *Computation of the child and dependent care credit for nonresidents and part-year residents.* Nonresidents and part-year residents that have incomes from Iowa sources in the tax year may claim child and dependent care credits on their Iowa returns. To compute the amount of child and dependent care credit that can be claimed on the Iowa return by a nonresident or part-year resident, the following formula should be used:

				*Iowa net income
Federal child and dependent care credit	×	Percentage of federal child and dependent credit allowed on Iowa return from table in subrule 42.9(1)	×	Federal adjusted gross income or all source net income for tax years beginning on or after January 1, 1991

*Iowa net income for purposes of determining the child care credit that can be claimed on the Iowa return by a nonresident or part-year resident taxpayer is the total of the Iowa source incomes less the Iowa source adjustments to income on Form IA 126. In the case of Form IA 126 for 1990, the Iowa net income is the total on line 27 and not the all source net income on line 28. For tax years beginning after 1990, the Iowa net income may be determined from a similar line of Form IA 126 as on line 27 of the 1990 IA 126 form. However, for tax years beginning after 1990, the all source net income is used in the denominator of the formula to determine the portion of the Iowa child and dependent care credit that can be claimed on the Iowa return by a nonresident of Iowa or a part-year resident of Iowa.

In cases where married taxpayers are nonresidents or part-year residents of Iowa and are filing separate Iowa returns or separately on the combined return form, the child and dependent credit allowable on the Iowa return should be allocated between the spouses in the ratio of the federal adjusted gross income of each spouse to the combined federal adjusted gross income of the couple. For tax years beginning on or after January 1, 1991, the child and dependent care credit is to be allocated between married nonresidents or part-year residents on the basis of the net income of each spouse to the combined net income of the taxpayers.

42.9(4) *Examples of computation of the child and dependent care credit for nonresidents and part-year residents.* The following are examples of computation of the child and dependent care credit for nonresidents and part-year residents.

EXAMPLE A. A married couple lives in Omaha, Nebraska. One of the spouses worked in Iowa in 1990 and had wages and other incomes from Iowa sources that resulted in an Iowa net income of $15,000 in the tax year. That spouse had a federal adjusted gross income or all source net income of $20,000. The other spouse had no Iowa net income, but a federal adjusted gross income or an all source net income of $30,000. The couple's total federal adjusted gross income or all source net income in the tax year was $50,000. The taxpayers had a federal child and dependent care credit of $960 which related to the expenses incurred for the care of their two young children. The taxpayers' Iowa child and dependent care credit is calculated below:

Federal child and dependent care credit		Percentage of federal child and dependent care credit allowed on Iowa return				Iowa net income		
$960	×	10%	=	$96	×	$\frac{\$15{,}000}{\$50{,}000}$	=	$29
						Federal adjusted gross income or all source net income		child and dependent care credit attributable to Iowa

The $29 Iowa child and dependent care credit is allocated between the spouses as shown below for the 1990 tax year:

$$\$29 \times \frac{\$20{,}000}{\$50{,}000} = \text{\$12 credit for spouse with \$20,000 adjusted gross income}$$

$$\$29 \times \frac{\$30{,}000}{\$50{,}000} = \text{\$17 credit for spouse with \$30,000 adjusted gross income}$$

Note that for the 1991 and 1992 tax years, the entire $29 child and dependent care credit would be allocated to the spouse with the Iowa source net income of $15,000, since the other spouse had no income from Iowa sources and the credit is allocated on the basis of Iowa source net income. For tax years beginning on or after January 1, 1993, no child and dependent care credit would be available for these taxpayers because their all source net income was $40,000 or more.

EXAMPLE B. A married couple lives in South Sioux City, Nebraska. One of the spouses had an Iowa net income of $10,000 and $25,000 in total federal adjusted gross income. The second spouse had an Iowa net income of $5,000 and $15,000 in total federal adjusted gross income. The taxpayers' combined federal adjusted gross income was $40,000. Their federal child care credit was $480. Their Iowa child care credit is computed as follows:

Federal child and dependent care credit		Percentage of federal child and dependent care credit allowed on Iowa return				Iowa net income		
$480	×	30%	=	$144	×	$\frac{\$15,000}{\$40,000}$	=	$54
						Federal adjusted gross income or all source net income		child and dependent care credit attributable to Iowa

The child and dependent care credit attributable to Iowa is allocated between the spouses on the basis of each spouse's federal adjusted gross income to the total federal adjusted gross income of both individuals for the 1990 tax year as shown below:

$$\$54 \times \frac{\$25,000}{\$40,000} = \$34 \text{ credit for spouse with } \$25,000 \text{ of federal adjusted gross income}$$

$$\$54 \times \frac{\$15,000}{\$40,000} = \$20 \text{ credit for spouse with } \$15,000 \text{ of federal adjusted gross income}$$

For the 1991 and 1992 tax years, the $54 child and dependent care credit is allocated between the spouses in the ratio of each spouse's Iowa source net income to the combined Iowa source net income of the taxpayers as follows:

$$\$54 \times \frac{\$10,000}{\$15,000} = \$36 \text{ for spouse with Iowa source net income of } \$10,000$$

$$\$54 \times \frac{\$5,000}{\$15,000} = \$18 \text{ for spouse with Iowa source net income of } \$5,000$$

The child and dependent care credit would not be allowed for tax years beginning on or after January 1, 1993, since the taxpayers' all source income was $40,000 or more.

EXAMPLE C. A married couple lives in Omaha, Nebraska. One of the spouses worked in Iowa and had wages and other incomes from Iowa sources or an Iowa net income of $15,000. That spouse had an all source net income of $18,000. The second spouse had an Iowa net income of $10,000 and an all source net income of $12,000. The taxpayers had a federal child and dependent care credit of $800 which related to expenses incurred for the care of their two young children. The taxpayers' Iowa child and dependent care credit is calculated below:

Federal child and dependent care credit		Percentage of federal child and dependent care credit allowed on Iowa return				Iowa net income / All source net income		
$800	×	50%	=	$400	×	$25,000 / $30,000	=	$333

The $333 credit is allocated between the spouses as shown below for the 1993 tax year:

$$\$333 \times \frac{\$10{,}000}{\$25{,}000} = \$133 \text{ for spouse with Iowa source net income of } \$10{,}000$$

$$\$333 \times \frac{\$15{,}000}{\$25{,}000} = \$200 \text{ for spouse with Iowa source net income of } \$15{,}000$$

This rule is intended to implement 2005 Iowa Code Supplement section 422.12C.

701—42.10(422) Seed capital income tax credit. Rescinded IAB 2/18/04, effective 3/24/04.

701—42.11(422D) Emergency medical services income surtax. Effective July 1, 1992, a county board of supervisors may offer for voter approval a local option income surtax, an ad valorem property tax, or a combination of the two taxes to generate revenues for emergency medical services. However, this rule will deal only with the local option income surtax for emergency medical services. If a majority of those voting in the election approve the emergency medical services income surtax, the income surtax will be imposed for tax years beginning on or after January 1 of the fiscal year in which the election is held. Thus, if an election is held in the 1992-1993 fiscal year (July 1, 1992, through June 30, 1993) and the income surtax is approved in the election, the income surtax will be imposed on 1993 returns for individuals filing on a calendar-year basis. In the case of individuals filing on a fiscal-year basis, the income surtax will be imposed on returns for tax years beginning in the 1993 year. If an emergency medical services income surtax is imposed for a county, it can be imposed only for a maximum period of five years. When the emergency medical income surtax is repealed because the five-year imposition has expired, the income surtax is repealed as of December 31 for tax years beginning on or after that date.

42.11(1) *The rate of the income surtax imposed for emergency medical services.* After the income surtax is approved by an election of county voters, the board of supervisors will set the rate of tax to be imposed, which can be expressed in tenths of 1 percent or hundredths of 1 percent but cannot exceed 1 percent. In addition, because the cumulative total of the percents of income surtax imposed on any taxpayer in the county cannot exceed 20 percent, the rate of an emergency medical services income surtax may be limited, if a school district income surtax has been approved previously by a school district in the county and the surtax rate exceeds 19 percent. Therefore, assuming that a school district in the county had previously approved an income surtax rate of 19.4 percent, the medical emergency income surtax rate would be limited to six-tenths of 1 percent. If a school district income surtax and emergency medical income surtax are approved on or about the same date and the cumulative total of the income surtaxes is greater than 20 percent, the income surtax approved on the earlier of the two dates will be allowed at the rate approved and the second income surtax approved will be limited accordingly so the cumulative rate will not exceed 20 percent. If a school district income surtax and an emergency medical income surtax are approved on the same date with a proposed cumulative rate that exceeds 20 percent, each of the surtaxes will be reduced equally so the cumulative surtax rate will not exceed 20 percent. Assuming that a school district in a particular county approves an income surtax of 20 percent on November 3, 1992, and an emergency medical income surtax of 1 percent is approved on the same date, both surtaxes

will be reduced by five-tenths of 1 percent so the cumulative rate of the two income surtaxes does not exceed 20 percent. The department of management can provide information about any income surtaxes that have been approved for the school districts in the county.

42.11(2) *Imposing the medical emergency income surtax.* The medical emergency income surtax will be imposed on the state income tax liability on each individual residing in the county at the end of the individual's tax year, whether the individual's tax year ends at the end of the calendar year or fiscal year. For purposes of the emergency medical income surtax, an individual's income tax liability is the aggregate of the state income taxes determined in Iowa Code section 422.5 less the nonrefundable credits against computed income tax which are authorized in Iowa Code chapter 422, division II.

42.11(3) *Administering the emergency medical income surtax.* The director of revenue is to administer the emergency medical income surtax as nearly as possible as other state individual tax laws are administered. All powers and requirements related to administering the state income law apply to the administration of the emergency medical income surtax including, but not limited to, the provisions of Iowa Code sections 422.4, 422.20 to 422.31, 422.68, 422.70, and 422.72 to 422.75. The county board of supervisors and county officials should confer with the director for assistance in drafting the ordinance imposing the emergency medical income surtax. Certified copies of the ordinance should be filed with the department of revenue and the department of management within 30 days after the emergency medical income surtax is approved.

42.11(4) *Accounting for the emergency medical income surtax and paying the surtax.* The department should account for the medical emergency income surtax and any interest and penalties on the surtax so there is a separate accounting for each county where the income surtax is imposed. The accounting shall be applicable to those individual income tax returns filed on or before November 1 of the calendar year following the tax year for which the tax is imposed. The medical emergency income surtax and any penalties and interest should be credited to a "local income surtax fund" established in the office of the state treasurer. On or before December 15 of the year after the tax year, the director of revenue shall certify to the state treasurer the income surtax and any interest and penalties collected from returns filed on or before November 1.

This rule is intended to implement 1992 Iowa Acts, chapter 1226.

701—42.12(422) Franchise tax credit. For tax years beginning on or after January 1, 1997, a shareholder in a financial institution as defined in Section 581 of the Internal Revenue Code, which has elected to have its income taxed directly to the shareholders, may take a tax credit equal to the shareholder's pro-rata share of the Iowa franchise tax paid by the financial institution.

For tax years beginning on or after July 1, 2004, a member of a financial institution organized as a limited liability company that is taxed as a partnership for federal income tax purposes, which has elected to have its income taxed directly to its members, may take a tax credit equal to the member's pro-rata share of the Iowa franchise tax paid by the financial institution.

The credit must be computed by recomputing the amount of tax computed under Iowa Code section 422.5 by reducing the shareholder's or member's taxable income by the shareholder's or member's pro-rata share of the items of income and expenses of the financial institution and subtracting the credits allowed in Iowa Code sections 422.12 and 422.12B for tax years beginning prior to January 1, 2007. The recomputed tax must be subtracted from the amount of tax computed under Iowa Code section 422.5 reduced by the credits allowed in Iowa Code sections 422.12 and 422.12B for tax years beginning prior to January 1, 2007. For tax years beginning on or after January 1, 2007, only the credits allowed in Iowa Code section 422.12 are reduced in computing the franchise tax credit.

The resulting amount, not to exceed the shareholder's or member's pro-rata share of the franchise tax paid by the financial institution, is the amount of tax credit allowed the shareholder or member.

This rule is intended to implement Iowa Code section 422.11 as amended by 2007 Iowa Acts, Senate File 590.

701—42.13(15E) Eligible housing business tax credit. An individual who qualifies as an eligible housing business may receive a tax credit of up to 10 percent of the new investment which is directly

related to the building or rehabilitating of homes in an enterprise zone. The tax credit may be taken on the tax return for the tax year in which the home is ready for occupancy.

An eligible housing business is one which meets the criteria in Iowa Code section 15E.193B.

42.13(1) *Computation of credit.* New investment which is directly related to the building or rehabilitating of homes includes but is not limited to the following costs: land, surveying, architectural services, building permits, inspections, interest on a construction loan, building materials, roofing, plumbing materials, electrical materials, amounts paid to subcontractors for labor and materials provided, concrete, labor, landscaping, appliances normally provided with a new home, heating and cooling equipment, millwork, drywall and drywall materials, nails, bolts, screws, and floor coverings.

New investment does not include the machinery, equipment, hand or power tools necessary to build or rehabilitate homes.

A taxpayer may claim on the taxpayer's individual income tax return the pro-rata share of the Iowa eligible housing business tax credit from a partnership, S corporation, limited liability company, estate, or trust. The portion of the credit claimed by the individual shall be in the same ratio as the individual's pro-rata share of the earnings of the partnership, S corporation, limited liability company, or estate or trust, except for projects beginning on or after July 1, 2005, which used low-income housing tax credits authorized under Section 42 of the Internal Revenue Code to assist in the financing of the housing development. For these projects, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder.

For tax years beginning prior to January 1, 2007, any Iowa eligible housing business tax credit in excess of the individual's tax liability, less the credits authorized in Iowa Code sections 422.12 and 422.12B, may be carried forward for seven years or until it is used, whichever is the earlier. For tax years beginning on or after January 1, 2007, any Iowa eligible housing business tax credit in excess of the individual's tax liability less the credits authorized in Iowa Code section 422.12 may be carried forward for seven years or until it is used, whichever is the earlier.

If the eligible housing business fails to maintain the requirements of Iowa Code section 15E.193B, to be an eligible housing business, the taxpayer may be required to repay all or a part of the tax incentives the taxpayer received. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the income tax credit may have expired, the department may proceed to collect the tax incentives forfeited by failure to maintain the requirements of Iowa Code section 15E.193B. This is because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability.

Prior to January 1, 2001, the tax credit cannot exceed 10 percent of $120,000 for each home or individual unit in a multiple dwelling unit building. Effective January 1, 2001, the tax credit cannot exceed 10 percent of $140,000 for each home or individual unit in a multiple dwelling unit building.

Effective for tax periods beginning on or after January 1, 2003, the taxpayer must receive a tax credit certificate from the Iowa department of economic development to claim the eligible housing business tax credit. The tax credit certificate shall include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the date the project was completed, the amount of the eligible housing business tax credit and the tax year for which the credit may be claimed. In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 42.13(2). The tax credit certificate must be attached to the income tax return for the tax period in which the home is ready for occupancy. The administrative rules for the eligible housing business tax credit for the Iowa department of economic development may be found under 261—Chapter 59.

42.13(2) *Transfer of the eligible housing business tax credit.* For tax periods beginning on or after January 1, 2003, the eligible housing business tax credit certificates may be transferred to any person or entity if low-income housing tax credits authorized under Section 42 of the Internal Revenue Code are used to assist in the financing of the housing development. In addition, the eligible housing business tax credit certificates may be transferred to any person or entity for projects beginning on or after July 1, 2005, if the housing development is located in a brownfield site as defined in Iowa Code section 15.291, or if the housing development is located in a blighted area as defined in Iowa Code section 403.17. No more than $3 million of tax credits for housing developments located in brownfield sites or blighted

areas may be transferred in a calendar year, with no more than $1.5 million being transferred for any one eligible housing business in a calendar year.

Within 90 days of transfer of the tax credit certificate for transfers prior to July 1, 2006, the transferee must submit the transferred tax credit certificate to the Iowa department of economic development, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. For transfers on or after July 1, 2006, the transferee must submit the transferred tax credit certificate to the department of revenue. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee for transfers prior to July 1, 2006, the Iowa department of economic development will issue a replacement tax credit certificate to the transferee. For transfers on or after July 1, 2006, the department of revenue will issue the replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the housing business tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The replacement tax credit certificate must contain the same information that was on the original certificate and must have the same expiration date as the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax period for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credits shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

This rule is intended to implement Iowa Code Supplement section 15E.193B as amended by 2006 Iowa Acts, chapter 1158.

701—42.14(422) Assistive device tax credit. Effective for tax years beginning on or after January 1, 2000, a taxpayer who is a small business that purchases, rents, or modifies an assistive device or makes workplace modifications for an individual with a disability who is employed or will be employed by the taxpayer may qualify for an assistive device tax credit, subject to the availability of the credit. The assistive device credit is equal to 50 percent of the first $5,000 paid during the tax year by the small business for the purchase, rental, or modification of an assistive device or for making workplace modifications. Any credit in excess of the tax liability may be refunded or applied to the taxpayer's tax liability for the following tax year. If the taxpayer elects to take the assistive device tax credit, the taxpayer is not to deduct for Iowa income tax purposes any amount of the cost of an assistive device or workplace modification that is deductible for federal income tax purposes. A small business will not be eligible for the assistive device credit if the device is provided for an owner of the small business unless the owner is a bona fide employee of the small business.

42.14(1) *Submitting applications for the credit.* A small business wanting to receive the assistive device tax credit must submit an application for the credit to the Iowa department of economic development and provide other information and documents requested by the Iowa department of economic development. If the taxpayer meets the criteria for qualification for the credit, the Iowa department of economic development will issue the taxpayer a certificate of entitlement for the credit. However, the aggregate amount of assistive device tax credits that may be granted by the Iowa department of economic development to all small businesses during a fiscal year cannot exceed $500,000. The certificate for entitlement of the assistive device credit is to include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the estimated amount of the tax credit, the date on which the taxpayer's application was approved, the date when it is anticipated that the assistive device project will be completed and a space on the application where the taxpayer is to enter the date that the assistive device project was completed. The certificate for entitlement will not be considered to be valid for purposes of claiming the assistive device credit on the taxpayer's Iowa income tax return until the taxpayer has completed the assistive device project and has entered the completion date on the certificate of entitlement form. The tax year of the small business in which the assistive device project is completed is the tax year for which the assistive device credit may be claimed.

For example, in a case where taxpayer A received a certificate of entitlement for an assistive device credit on September 15, 2000, and completed the assistive device workplace modification project on January 15, 2001, taxpayer A could claim the assistive device credit on taxpayer A's 2001 Iowa return, assuming that taxpayer A is filing returns on a calendar-year basis.

The department of revenue will not allow the assistive device credit on a taxpayer's return if the certificate of entitlement or a legible copy of the certificate is not attached to the taxpayer's income tax return. If the taxpayer has been granted a certificate of entitlement and the taxpayer is a partnership, limited liability company, S corporation, estate, or trust, where the income of the taxpayer is taxed to the individual owner(s) of the business entity, the taxpayer must provide a copy of the certificate to each of the owners with a statement showing how the credit is to be allocated among the individual owners of the business entity. An individual owner is to attach a copy of the certificate of entitlement and the statement of allocation of the assistive device credit to the individual's state income tax return.

42.14(2) *Definitions.* The following definitions are applicable to this rule:

"Assistive device" means any item, piece of equipment, or product system which is used to increase, maintain, or improve the functional capabilities of an individual with a disability in the workplace or on the job. "Assistive device" does not mean any medical device, surgical device, or organ implanted or transplanted into or attached directly to an individual. "Assistive device" does not include any device for which a certificate of title is issued by the state department of transportation, but does include any item, piece of equipment, or product system otherwise meeting the definition of "assistive device" that is incorporated, attached, or included as a modification in or to such a device issued a certificate of title.

"Business entity" means partnership, limited liability company, S corporation, estate, or trust, where the income of the business is taxed to each of the individual owners of the business, whether the individual owner is a partner, member, shareholder, or beneficiary.

"Disability" means the same as defined in Iowa Code section 15.102. Therefore, "disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of the individual, a record of physical or mental impairment that substantially limits one or more of the major life activities of the individual, or being regarded as an individual with a physical or mental impairment that substantially limits one or more of the major life activities of the individual. "Disability" does not include any of the following:

1. Homosexuality or bisexuality;
2. Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders, or other sexual behavior disorders;
3. Compulsive gambling, kleptomania, or pyromania;
4. Psychoactive substance abuse disorders resulting from current illegal use of drugs;
5. Alcoholism.

"Employee" means an individual who is employed by the small business who meets the criteria in Treasury Regulation § 31.3401(c)-1(b), which is the definition of an employee for federal income tax withholding purposes. An individual who receives self-employment income from the small business is not to be considered an employee of the small business for purposes of this rule.

"Small business" means that the business either had gross receipts in the tax year before the current tax year of $3 million or less or employed not more than 14 full-time employees during the tax year prior to the current tax year.

"Workplace modifications" means physical alterations to the office, factory, or other work environment where the disabled employee is working or is to work.

42.14(3) *Allocation of credit to owners of a business entity.* If the taxpayer that was entitled to an assistive device credit is a business entity, the business entity is to allocate the allowable credit to each of the individual owners of the entity on the basis of each owner's pro-rata share of the earnings of the entity to the total earnings of the entity. Therefore, if a partnership has an assistive device credit for a tax year of $2,500 and one partner of the partnership receives 25 percent of the earnings of the partnership, that partner would receive an assistive device credit for the tax year of $625 or 25 percent of the total assistive device credit of the partnership.

This rule is intended to implement Iowa Code section 422.11E.

701—42.15(422) Historic preservation and cultural and entertainment district tax credit. A historic preservation and cultural and entertainment district tax credit, subject to the availability of the credit, may be claimed against a taxpayer's Iowa individual income tax liability for 25 percent of the qualified costs of rehabilitation of property to the extent the costs were incurred on or after July 1, 2000, for approved rehabilitation projects of eligible property in Iowa. The administrative rules for the historic preservation and cultural and entertainment district tax credit for the historical division of the department of cultural affairs may be found under 223—Chapter 48.

42.15(1) *Eligible properties for the historic preservation and cultural and entertainment district tax credit.* The following types of property are eligible for the historic preservation and cultural and entertainment district tax credit:

a. Property verified as listed on the National Register of Historic Places or eligible for such listing through the state historic preservation office (SHPO).

b. Property designated as of historic significance to a district listed in the National Register of Historic Places or eligible for such designation by being located in an area previously surveyed and evaluated as eligible for the National Register of Historic Places.

c. Property or district designated as a local landmark by a city or county ordinance.

d. Any barn constructed prior to 1937.

42.15(2) *Application and review process for the historic preservation and cultural and entertainment district tax credit.* Taxpayers who want to claim an income tax credit for completing a historic preservation and cultural and entertainment district project must submit an application for approval of the project. The application forms for the historic preservation and cultural and entertainment district tax credit may be requested from the State Tax Credit Program Manager, State Historic Preservation Office, Department of Cultural Affairs, 600 E. Locust, Des Moines, Iowa 50319-0290. The telephone number for this office is (515)281-4137. Applications for the credit will be accepted by the state historic preservation office on or after July 1, 2000, until such time as all the available credits allocated for each fiscal year are encumbered. For fiscal years beginning on or after July 1, 2000, $2.4 million shall be appropriated for historic preservation and cultural and entertainment district tax credits for each year. For the fiscal years beginning July 1, 2005, and July 1, 2006, an additional $4 million of tax credits is appropriated for projects located in cultural and entertainment districts which are certified by the department of cultural affairs. If less than $4 million of tax credits is appropriated during a fiscal year, the remaining amount shall be applied to reserved tax credits for projects not located in cultural and entertainment districts in the order of original reservation by the department of cultural affairs. For the fiscal year beginning July 1, 2007, $10 million in historic preservation and cultural and entertainment district tax credits is available. For the fiscal year beginning July 1, 2008, $15 million in historic preservation and cultural and entertainment district tax credits is available. For the fiscal year beginning July 1, 2009, and for subsequent fiscal years, $20 million in historic preservation and cultural and entertainment district tax credits is available. Tax credits shall not be reserved by the department of cultural affairs for more than three years except for tax credits issued for contracts entered into prior to July 1, 2007.

Applicants for the historic preservation and cultural and entertainment district tax credit must include all information and documentation requested on the application forms for the credit in order for the application to be processed.

The state historic preservation office (SHPO) is to establish selection criteria and standards for rehabilitation projects involving eligible property. The approval process is not to exceed 90 days from the date the application is received by SHPO. To the extent possible, the standards used by SHPO are to be consistent with the standards of the United States Secretary of the Interior for rehabilitation of eligible property that is listed on the National Register of Historic Places or is designated as of historic significance to a district listed in the National Register of Historic Places.

The selection standards are to provide that a taxpayer who qualifies for the rehabilitation investment credit under Section 47 of the Internal Revenue Code shall automatically qualify for the state historic preservation and cultural and entertainment district tax credit to the extent that all the historic preservation

and cultural and entertainment district tax credits appropriated for the fiscal year have not already been awarded.

Once SHPO approves a particular historic preservation and cultural and entertainment district tax credit project application, the office will encumber an estimated historic preservation and cultural and entertainment district tax credit under the name of the applicant(s) for the year the project is approved.

42.15(3) *Computation of the amount of the historic preservation and cultural and entertainment district tax credit.* The amount of the historic preservation and cultural and entertainment district tax credit is 25 percent of the qualified rehabilitation costs made to an eligible property in a project. Qualified rehabilitation costs are those rehabilitation costs approved by SHPO for a project for a particular taxpayer to the extent those rehabilitation costs are actually expended by that taxpayer.

In the case of commercial property, rehabilitation costs must equal at least 50 percent of the assessed value of the property, excluding the value of the land, prior to rehabilitation. In the case of residential property or barns, the rehabilitation costs must equal at least $25,000 or 25 percent of the fair market value, excluding the value of the land, prior to the rehabilitation, whichever amount is less. In computing the tax credit for eligible property that is classified as residential or as commercial with multifamily residential units, the rehabilitation costs are not to exceed $100,000 per residential unit. In computing the tax credit, the only costs which may be included are the rehabilitation costs incurred between the period ending on the project completion date and beginning on the date two years prior to the project completion date, provided that any qualified rehabilitation costs incurred prior to the date of approval of the project must be qualified rehabilitation expenditures under the federal rehabilitation credit in Section 47 of the Internal Revenue Code.

For purposes of the historic preservation and cultural and entertainment district tax credit, qualified rehabilitation costs include those costs properly included in the basis of the eligible property for income tax purposes. Costs treated as expenses and deducted in the year paid or incurred and amounts that are otherwise not added to the basis of the property for income tax purposes are not qualified rehabilitation costs. Amounts incurred for architectural and engineering fees, site survey fees, legal expenses, insurance premiums, development fees, and other construction-related costs are qualified rehabilitation costs to the extent they are added to the basis of the eligible property for tax purposes. Costs of sidewalks, parking lots, and landscaping do not constitute qualified rehabilitation costs. Any rehabilitation costs used in the computation of the historic preservation and cultural and entertainment district tax credit are not added to the basis of the property for Iowa income tax purposes if the rehabilitation costs were incurred in a tax year beginning on or after January 1, 2000, but prior to January 1, 2001. Any rehabilitation costs incurred in a tax year beginning on or after January 1, 2001, are added to the basis of the rehabilitated property for income tax purposes except those rehabilitation expenses that are equal to the amount of the computed historic preservation and cultural and entertainment district tax credit for the tax year.

For example, the basis of a commercial building in a historic district was $500,000, excluding the value of the land, before the rehabilitation project. During a project to rehabilitate this building, $600,000 in rehabilitation costs were expended to complete the project and $500,000 of those rehabilitation costs were qualified rehabilitation costs which were eligible for the historic preservation and cultural and entertainment district tax credit of $125,000. Therefore, the basis of the building for Iowa income tax purposes was $975,000, since the qualified rehabilitation costs of $125,000, which are equal to the amount of the historic preservation and cultural and entertainment district tax credit for the tax year, are not added to the basis of the rehabilitated property. The basis of the building for federal income tax purposes was $1,100,000. However, for tax years beginning only in the 2000 calendar year, the basis of the building for Iowa income tax purposes would have been $600,000, since for those tax periods, any qualified rehabilitation expenses used to compute the historic preservation and cultural and entertainment district tax credit for the tax year could not be added to the basis of the property. It should be noted that this example does not consider any possible reduced basis for the building for federal income tax purposes due to the rehabilitation investment credit provided in Section 47 of the Internal Revenue Code. If the building in this example were eligible for the federal rehabilitation credit provided in Section 47

of the Internal Revenue Code, the basis of the building for Iowa tax purposes would not be affected by the federal credit.

42.15(4) *Completion of the historic preservation and cultural and entertainment district project and claiming the historic preservation and cultural and entertainment district tax credit on the Iowa return.* After the taxpayer completes an authorized rehabilitation project, the taxpayer must get a certificate of completion of the project from the state historic preservation office of the department of cultural affairs. After verifying the taxpayer's eligibility for the historic preservation and cultural and entertainment district tax credit, the state historic preservation office, in consultation with the Iowa department of economic development, is to issue a historic preservation and cultural and entertainment district tax credit certificate, which is to be attached to the taxpayer's income tax return for the tax year in which the rehabilitation project is completed. The tax credit certificate is to include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the address or location of the rehabilitation project, the date the project was completed and the amount of the historic preservation and cultural and entertainment district tax credit. In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 42.15(6). In addition, if the taxpayer is a partnership, limited liability company, estate or trust, where the tax credit is allocated to the owners or beneficiaries of the entity, a list of the owners or beneficiaries and the amount of credit allocated to each owner or beneficiary should be provided with the certificate. The tax credit certificate should be attached to the income tax return for the period in which the project was completed. If the amount of the historic preservation and cultural and entertainment district tax credit exceeds the taxpayer's income tax liability for the tax year for which the credit applies, the taxpayer is entitled to a refund of the excess portion of the credit at a discounted value for tax periods ending prior to July 1, 2007. However, the refund cannot exceed 75 percent of the allowable tax credit. The refund of the tax credit is to be computed on the basis of the following table:

Annual Interest Rate	Five-Year Present Value/Dollar Compounded Annually
5%	$.784
6%	$.747
7%	$.713
8%	$.681
9%	$.650
10%	$.621
11%	$.594
12%	$.567
13%	$.543
14%	$.519
15%	$.497
16%	$.476
17%	$.456
18%	$.437

EXAMPLE: The following is an example to show how the table can be used to compute a refund for a taxpayer. An individual has a historic preservation and cultural and entertainment district tax credit of $800,000 for a project completed in 2001. The individual had an income tax liability prior to the credit of $300,000 on the 2001 return, which leaves an excess credit of $500,000. We will assume that the annual interest rate for tax refunds issued by the department of revenue in the 2001 calendar year is 11 percent. Therefore, to compute the five-year present value of the $500,000 excess credit, $500,000 is multiplied by the compound factor for 11 percent of .594 in the table, which results in a refund of $297,000.

For tax years ending on or after July 1, 2007, any historic preservation and cultural and entertainment district tax credit in excess of the taxpayer's tax liability is fully refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

42.15(5) *Allocation of historic preservation and cultural and entertainment district tax credits to the individual owners of the entity.* When the taxpayer that has earned a historic preservation and cultural and entertainment district tax credit is a partnership, limited liability company, S corporation, estate or trust where the individual owners of the business entity are taxed on the income of the entity, the historic preservation and cultural and entertainment district tax credit is to be allocated to the individual owners. The business entity is to allocate the historic preservation and cultural and entertainment district tax credit to each individual owner on the same pro-rata basis as the earnings of the business are allocated to the owners for projects beginning prior to July 1, 2005. For example, if a partner of a partnership received 25 percent of the earnings or income of the partnership for the tax year in which the partnership had earned a historic preservation and cultural and entertainment district tax credit, 25 percent of the credit would be allocated to this partner.

For projects beginning on or after July 1, 2005, which used low-income housing credits authorized under Section 42 of the Internal Revenue Code to assist in the financing of the rehabilitation project, the credit does not have to be allocated based on the pro-rata share of earnings of the partnership, limited liability company or S corporation. For these projects, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder.

42.15(6) *Transfer of the historic preservation and cultural and entertainment district tax credit.* For tax periods beginning on or after January 1, 2003, the historic preservation and cultural and entertainment district tax credit certificates may be transferred to any person or entity.

Within 90 days of transfer of the tax credit certificate for transfers prior to July 1, 2006, the transferee must submit the transferred tax credit certificate to the state historic preservation office of the department of cultural affairs, along with a statement which contains the transferee's name, address and tax identification number and amount of the tax credit being transferred. For transfers on or after July 1, 2006, the transferee must submit the transferred tax credit certificate to the department of revenue. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee for transfers prior to July 1, 2006, the state historic preservation office shall issue a replacement tax credit certificate to the transferee. For transfers on or after July 1, 2006, the department of revenue will issue the replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the historic preservation and cultural and entertainment district tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The replacement tax credit certificate must contain the same information that was on the original certificate and must have the same expiration date as the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax period for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

If the historic preservation and cultural and entertainment district tax credit of the transferee exceeds the tax liability shown on the transferee's return, the refund shall be discounted as described in subrule 42.15(4) for tax years ending prior to July 1, 2007, just as the refund would have been discounted on the Iowa income tax return of the taxpayer. For tax years ending on or after July 1, 2007, any historic preservation and cultural and entertainment district tax credit of the transferee in excess of the transferee's tax liability is fully refundable.

This rule is intended to implement Iowa Code chapter 404A and Iowa Code section 422.11D as amended by 2007 Iowa Acts, Senate File 566.

701—42.16(422) Ethanol blended gasoline tax credit. Effective for tax years beginning on or after January 1, 2002, a retail gasoline dealer may claim an ethanol blended gasoline tax credit against that individual's individual income tax liability. The taxpayer must operate at least one retail motor fuel site at which more than 60 percent of the total gallons of gasoline sold and dispensed through one or more motor fuel pumps by the taxpayer in the tax year is ethanol blended gasoline. The tax credit shall be calculated separately for each retail motor fuel site operated by the taxpayer. The amount of the credit for each eligible retail motor fuel site is two and one-half cents multiplied by the total number of gallons of ethanol blended gasoline sold and dispensed through all motor fuel pumps located at that retail motor fuel site during the tax year in excess of 60 percent of all gasoline sold and dispensed through motor fuel pumps at that retail motor fuel site during the tax year.

For fiscal years ending in 2002, the tax credit is available for each eligible retail motor fuel site based on the total number of gallons of ethanol blended gasoline sold and dispensed through all motor fuel pumps located at the taxpayer's retail motor fuel site from January 1, 2002, until the end of the taxpayer's fiscal year. Assuming a tax period that began on July 1, 2001, and ended on June 30, 2002, the taxpayer would be eligible for the tax credit based on the gallons of ethanol blended gasoline sold from January 1, 2002, through June 30, 2002. For taxpayers having a fiscal year ending in 2002, a claim for refund to claim the ethanol blended gasoline tax credit must be filed before October 1, 2003, even though the statute of limitations for refund set forth in 701—subrule 43.3(8) has not yet expired.

EXAMPLE: A taxpayer sold 100,000 gallons of gasoline at the taxpayer's retail motor fuel site during the tax year, 70,000 gallons of which was ethanol blended gasoline. The taxpayer is eligible for the credit since more than 60 percent of the total gallons sold was ethanol blended gasoline. The number of gallons in excess of 60 percent of all gasoline sold is 70,000 less 60,000, or 10,000 gallons. Two and one-half cents multiplied by 10,000 equals a $250 credit available.

The credit may be calculated on Form IA6478. The credit must be calculated separately for each retail motor fuel site operated by the taxpayer. Therefore, if the taxpayer operates more than one retail motor fuel site, it is possible that one retail motor fuel site may be eligible for the credit while another retail motor fuel site may not. The credit may be taken only for those retail motor fuel sites for which more than 60 percent of gasoline sales involve ethanol blended gasoline.

Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

Starting with the 2006 calendar tax year, a taxpayer may claim the ethanol blended gasoline tax credit even if the taxpayer also claims the E-85 gasoline promotion tax credit provided in rule 42.31(422) for the same tax year for the same ethanol gallons.

EXAMPLE: A taxpayer sold 200,000 gallons of gasoline at a retail motor fuel site in 2006, of which 160,000 gallons was ethanol blended gasoline. Of these 160,000 gallons, 1,000 gallons was E-85 gasoline. Taxpayer is entitled to claim the ethanol blended gasoline tax credit of two and one-half cents multiplied by 40,000 gallons, since this constitutes the gallons in excess of 60 percent of the total gasoline gallons sold. Taxpayer may also claim the E-85 gasoline promotion tax credit on the 1,000 gallons of E-85 gasoline sold.

42.16(1) *Definitions.* The following definitions are applicable to this rule:

"Ethanol blended gasoline" means the same as defined in Iowa Code section 214A.1 as amended by 2006 Iowa Acts, House File 2754, section 3.

"Gasoline" means any liquid product prepared, advertised, offered for sale or sold for use as, or commonly and commercially used as, motor fuel for use in a spark-ignition, internal combustion engine, and which meets the specifications provided in Iowa Code section 214A.2.

"Motor fuel pump" means a pump, meter, or similar commercial weighing and measuring device used to measure and dispense motor fuel for sale on a retail basis.

"Retail dealer" means a person engaged in the business of storing and dispensing motor fuel from a motor fuel pump for sale on a retail basis, regardless of whether the motor fuel pump is located at a retail motor fuel site including a permanent or mobile location.

"Retail motor fuel site" means a geographic location in this state where a retail dealer sells and dispenses motor fuel on a retail basis. For example, tank wagons are considered retail motor fuel sites.

"Sell" means to sell on a retail basis.

42.16(2) *Allocation of credit to owners of a business entity.* If the taxpayer that was entitled to the ethanol blended gasoline tax credit is a partnership, limited liability company, S corporation, estate, or trust, the business entity shall allocate the allowable credit to each of the individual owners of the entity on the basis of each owner's pro-rata share of the earnings of the entity to the total earnings of the entity. Therefore, if a partnership has an ethanol blended gasoline tax credit of $3,000 and one partner of the partnership receives 25 percent of the earnings of the partnership, that partner would receive an ethanol blended gasoline tax credit for the tax year of $750 or 25 percent of the total ethanol blended gasoline tax credit of the partnership.

42.16(3) *Repeal of ethanol blended gasoline tax credit.* The ethanol blended gasoline tax credit is repealed on January 1, 2009. However, the tax credit is available for taxpayers whose fiscal year ends after December 31, 2008, for those ethanol gallons sold beginning on the first day of the taxpayer's fiscal year until December 31, 2008. The ethanol promotion tax credit described in rule 42.37(422) is available beginning January 1, 2009, for retail dealers of gasoline.

See 701—subrule 52.19(3) for an example illustrating how this subrule is applied.

This rule is intended to implement Iowa Code section 422.11C as amended by 2006 Iowa Acts, House File 2754.

701—42.17(15E) Eligible development business investment tax credit. Effective for tax years beginning on or after January 1, 2001, a business which qualifies as an eligible development business may receive a tax credit of up to 10 percent of the new investment which is directly related to the construction, expansion or rehabilitation of building space to be used for manufacturing, processing, cold storage, distribution, or office facilities.

An eligible development business must be approved by the Iowa department of economic development prior to March 17, 2004, and meet the qualifications of Iowa Code section 15E.193C. Effective March 17, 2004, the eligible development business program is repealed.

New investment includes the purchase price of land and the cost of improvements made to real property. The tax credit may be claimed by an eligible development business in the tax year in which the construction, expansion or rehabilitation is completed.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until used, whichever is the earlier.

If the business is a partnership, S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

If the eligible development business fails to meet and maintain any one of the requirements to be an eligible business, the business shall be subject to repayment of all or a portion of the amount of tax incentives received. For example, if within five years of project completion the development business sells or leases any space to any retail business, the development business shall proportionally repay the value of the investment credit. The proportion of the investment credit that would be due for repayment by an eligible development business for selling or leasing space to a retail business would be determined by dividing the square footage of building space occupied by the retail business by the square footage of the total building space.

An eligible business, which is not a development business, which operates in an enterprise zone cannot claim an investment tax credit if the property is owned, or was previously owned, by an approved development business that has already received an investment tax credit. An eligible business, which is not a development business, can claim an investment tax credit only on additional, new improvements made to real property that was not included in the development business's approved application for the investment tax credit.

This rule is intended to implement Iowa Code section 15E.193C.

701—42.18(15E,422) Venture capital credits.

42.18(1) *Investment tax credit for an equity investment in a qualifying business or community-based seed capital fund.* See rule 123—2.1(15E) for the discussion of the investment tax credit for an equity investment in a qualifying business or community-based seed capital fund, along with the issuance of tax credit certificates by the Iowa capital investment board.

The department of revenue will be notified by the Iowa capital investment board when the tax credit certificates are issued. The tax credit certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

For equity investments made in a community-based seed capital fund or equity investments made in a qualifying business on or after January 1, 2004, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

For equity investments made in a qualifying business prior to January 1, 2004, only direct investments made by an individual are eligible for the investment tax credit. Individuals receiving income from a revocable trust's investment in a qualifying business are eligible for the investment tax credit for the portion of the revocable trust's equity investment in a qualifying business.

42.18(2) *Investment tax credit for an equity investment in a venture capital fund.* See rule 123—3.1(15E) for the discussion of the investment tax credit for an equity investment in a venture capital fund, along with the issuance of tax credit certificates by the Iowa capital investment board.

The department of revenue will be notified by the Iowa capital investment board when the tax credit certificates are issued. The tax credit certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

For equity investments made in a venture capital fund, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

42.18(3) *Contingent tax credit for investments in Iowa fund of funds.* See rule 123—4.1(15E) for the discussion of the contingent tax credit available for investments made in the Iowa fund of funds organized by the Iowa capital investment corporation. Tax credit certificates related to the contingent tax credits will be issued by the Iowa capital investment board.

The department of revenue will be notified by the Iowa capital investment board when these tax credit certificates are issued and, if applicable, when they are redeemed. If the tax credit certificate is redeemed, the certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

If the tax credit certificate is redeemed, any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until used, whichever is the earlier.

If the tax credit certificate is redeemed, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

This rule is intended to implement Iowa Code section 15E.43 as amended by 2004 Iowa Acts, Senate File 443, and sections 15E.51, 15E.66, 422.11F and 422.11G.

701—42.19(15) New capital investment program tax credits. Effective for tax periods beginning on or after January 1, 2003, a business which qualifies under the new capital investment program is eligible to receive tax credits. An eligible business under the new capital investment program must be approved by the Iowa department of economic development and meet the qualifications of 2003 Iowa Acts, chapter 125, section 4. The new capital investment program was repealed on July 1, 2005, and has been replaced with the high quality job creation program. See rule 701—42.27(15) for information on the tax credits available under the high quality job creation program. Any tax credits earned by businesses approved under the new capital investment program prior to July 1, 2005, remain valid, and can be claimed on tax returns filed after July 1, 2005.

42.19(1) *Research activities credit.* A business approved under the new capital investment program is eligible for an additional research activities credit as described in 701—subrule 52.7(5). This credit for increasing research activities is in lieu of the research activities credit described in subrule 42.2(11).

42.19(2) *Investment tax credit.*

a. General rule. An eligible business can claim an investment tax credit equal to a percentage of the new investment directly related to new jobs created by the location or expansion of an eligible business. The percentage is equal to the amount provided in paragraph *"b."* New investment directly related to new jobs created by the location or expansion of an eligible business includes the following:

(1) The cost of machinery and equipment, as defined in Iowa Code section 427A.1(1), paragraphs *"e"* and *"j,"* purchased for use in the operation of the eligible business. The purchase price shall be depreciated in accordance with generally accepted accounting principles.

(2) The purchase price of real property and any buildings and structures located on the real property.

(3) The cost of improvements made to real property which is used in the operation of the eligible business.

For eligible businesses approved by the Iowa department of economic development on or after March 17, 2004, certain lease payments made by eligible businesses to a third-party developer will be considered to be new investment for purposes of computing the investment tax credit. The eligible business shall enter into a lease agreement with the third-party developer for a minimum of five years. The investment tax credit is based on the annual base rent paid to a third-party developer by the eligible business for a period not to exceed ten years. The total costs of the annual base rent payments for the ten-year period cannot exceed the cost of the land and the third-party developer's cost to build or renovate the building used by the eligible business. The annual base rent is defined as the total lease payment less taxes, insurance and operating and maintenance expenses.

Any credit in excess of the tax liability for the tax period may be carried forward seven years or until used, whichever is the earlier.

If the business is a partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount of the credit claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or estate or trust.

b. Tax credit percentage. The amount of tax credit claimed shall be based on the number of high-quality jobs created as determined by the Iowa department of economic development:

(1) If no high-quality jobs are created but economic activity within Iowa is advanced, the eligible business may claim a tax credit of up to 1 percent of the new investment.

(2) If 1 to 5 high-quality jobs are created, the eligible business may claim a tax credit of up to 2 percent of the new investment.

(3) If 6 to 10 high-quality jobs are created, the eligible business may claim a tax credit of up to 3 percent of the new investment.

(4) If 11 to 15 high-quality jobs are created, the eligible business may claim a tax credit of up to 4 percent of the new investment.

(5) If 16 or more high-quality jobs are created, the eligible business may claim a tax credit of up to 5 percent of the new investment.

c. Investment tax credit—value-added agricultural products or biotechnology-related processes. An eligible business whose project primarily involves the production of value-added agricultural products or uses biotechnology-related processes may elect to receive a refund for all or a portion of an unused investment tax credit. An eligible business includes a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol.

Eligible businesses that elect to receive a refund shall apply to the Iowa department of economic development for tax credit certificates between May 1 and May 15 of each fiscal year. Only those businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. The Iowa department of economic development shall not issue tax credit certificates for more than $4 million during a fiscal year to eligible businesses for this program and eligible businesses described in subrule 42.2(10). If applications are received for more than $4 million, the applicants shall receive certificates for a prorated amount.

The Iowa department of economic development shall issue tax credit certificates within a reasonable period of time. Tax credit certificates are valid for the tax year following project completion. The tax credit certificate must be attached to the tax return for the tax year during which the tax credit is claimed. The tax credit certificate shall not be transferred, except for a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol, as provided in subrule 42.2(10). For value-added agricultural projects involving ethanol, the cooperative must submit a list of its members and the share of each member's interest in the cooperative. The Iowa department of economic development shall issue a tax credit certificate to each member on the list.

d. Repayment of benefits. If an eligible business fails to maintain the requirements of the new capital investment program, the taxpayer may be required to repay all or a portion of the tax incentives taken on Iowa returns. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the tax credits may have expired, the department may proceed to collect the tax incentives forfeited by failure to maintain the requirements of the new capital investment program. This is because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability.

An eligible business in the new capital investment program may also be required to repay all or a portion of the tax incentives received on Iowa returns if the eligible business experiences a layoff of employees in Iowa or closes any of its facilities in Iowa.

If, within five years of purchase, the eligible business sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which a tax credit was claimed under this subrule, the income tax liability of the eligible business shall be increased by one of the following amounts:

(1) One hundred percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within one full year after being placed in service.

(2) Eighty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within two full years after being placed in service.

(3) Sixty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within three full years after being placed in service.

(4) Forty percent of the tax credit claimed if the property ceases to be eligible for the tax credit within four full years after being placed in service.

(5) Twenty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within five full years after being placed in service.

This rule is intended to implement Iowa Code sections 15.333 and 15.381 to 15.387.

701—42.20(15E) Endow Iowa tax credit. Effective for tax years beginning on or after January 1, 2003, a taxpayer who makes an endowment gift to an endow Iowa qualified community foundation may qualify for an endow Iowa tax credit, subject to the availability of the credit. The credit is equal to 20 percent of a taxpayer's endowment gift to an endow Iowa qualified community foundation approved by the Iowa department of economic development. The administrative rules for the endow Iowa tax credit for the Iowa department of economic development may be found under 261—Chapter 47.

The total amount of endow Iowa tax credits available is $2 million in the aggregate for the 2003 and 2004 calendar years. The total amount of endow Iowa tax credits is $2 million annually for the 2005-2007 calendar years, and $200,000 of these tax credits on an annual basis is reserved for endowment gifts of $30,000 or less. The maximum amount of tax credit granted to a single taxpayer shall not exceed $100,000 for the 2003-2007 calendar years. The total amount of endow Iowa tax credits annually for 2008 and subsequent calendar years is $2 million plus a percentage of the tax imposed on the adjusted gross receipts from gambling games in accordance with Iowa Code section 99F.11(3). The maximum amount of tax credit granted to a single taxpayer shall not exceed 5 percent of the total endow Iowa tax credit amount authorized for 2008 and subsequent years. The endow Iowa tax credit cannot be transferred to any other taxpayer.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

If a taxpayer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code Supplement section 15E.305 as amended by 2006 Iowa Acts, chapter 1151.

701—42.21(422) Soy-based cutting tool oil tax credit. Effective for tax periods ending after June 30, 2005, and beginning before January 1, 2007, a manufacturer may claim a soy-based cutting tool oil tax credit. A manufacturer, as defined in Iowa Code section 428.20, may claim the credit equal to the costs incurred during the tax year for the purchase and replacement costs relating to the transition from using nonsoy-based cutting tool oil to using soy-based cutting tool oil.

All of the following conditions must be met to qualify for the tax credit.

1. The costs must be incurred after June 30, 2005, and before January 1, 2007.
2. The costs must be incurred in the first 12 months of the transition from using nonsoy-based cutting tool oil to using soy-based cutting tool oil.
3. The soy-based cutting tool oil must contain at least 51 percent soy-based products.
4. The costs of the purchase and replacement must not exceed $2 per gallon of soy-based cutting tool oil used in the transition.
5. The number of gallons used in the transition cannot exceed 2,000 gallons.
6. The manufacturer shall not deduct for Iowa income tax purposes the costs incurred in the transition to using soy-based cutting tool oil which are deductible for federal tax purposes.

Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

If a taxpayer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement 2005 Iowa Acts, Senate File 389, section 1.

701—42.22(422) Tuition and textbook credit for expenses incurred for dependents attending grades kindergarten through 12 in Iowa. Effective for tax years beginning on or after January 1, 1998, taxpayers who pay tuition and textbook expenses of dependents who attend grades kindergarten through 12 in an Iowa school may receive a tax credit of 25 percent of up to $1000 of qualifying expenses for each dependent attending an elementary or secondary school located in Iowa. In order for the taxpayer to qualify for the tax credit for tuition and textbooks, the elementary school or secondary school that the dependent is attending must meet the standards for accreditation of public and nonpublic schools in Iowa provided in Iowa Code section 256.11. In addition, the school the dependent is attending must not be operated for profit and must adhere to the provisions of the United States Civil Rights Act of 1964, and the provisions of Iowa Code chapter 216, which is known as the Iowa civil

rights Act of 1965. The following definitions and criteria apply to the determination of the tax credit for amounts paid by the taxpayer for tuition and textbooks for a dependent attending an elementary or secondary school in Iowa:

42.22(1) *Tuition.* For purposes of the tuition and textbook tax credit, "tuition" means any charge made by an elementary or secondary school for the expense of personnel, buildings, equipment and materials other than textbooks, and other expenses of elementary or secondary schools which relate to the teaching of only those subjects that are legally and commonly taught in public elementary or secondary schools in Iowa. "Tuition" includes charges by a qualified school for summer school classes or for private instruction of a child who is physically unable to attend classes at the site of the elementary or secondary school.

"Tuition" does not include charges or fees which relate to the teaching of religious tenets, doctrines, or worship in cases where the purpose of the teaching is to inculcate the religious tenets, doctrines, or worship. In addition, "tuition" does not include amounts paid to an individual or other entity for private instruction of a dependent who attends an elementary or secondary school in Iowa. Amounts paid to a school for meals, lodging, or clothing for a dependent do not qualify for the tax credit for "tuition."

Amounts paid to an individual or organization for "home schooling" of a dependent or the teaching of a dependent outside of an elementary or secondary school may not be claimed for purposes of the tuition and textbook tax credit.

42.22(2) *Textbooks.* For purposes of the tuition and textbook tax credit, "textbooks" means books and other instructional materials used in elementary and secondary schools in Iowa to teach only those subjects legally and commonly taught in public elementary and secondary schools in Iowa. "Textbooks" includes fees or charges by the elementary or secondary school for required supplies or materials for classes in art, home economics, shop or similar courses. "Textbooks" includes books and materials used for extracurricular activities, such as sporting events, musical events, dramatic events, speech activities, driver's education, or programs of a similar nature.

"Textbooks" does not include amounts paid for books or other instructional materials used in the teaching of religious tenets, doctrines, or worship, in cases where the purpose of the teaching is to inculcate the religious tenets, doctrine, or worship. "Textbooks" also does not include amounts paid for books or other instructional materials used in teaching a dependent subjects in the home or outside of an elementary or secondary school.

42.22(3) *Extracurricular activities.* For purposes of the tuition and textbook tax credit, amounts paid for dependents to participate in or to attend extracurricular activities may be claimed as part of the tuition and textbook tax credit. "Extracurricular activities" includes sporting events, musical events, dramatic events, speech activities, and driver's education if provided at a school, and programs of a similar nature.

a. The following are specific examples of expenditures related to a dependent's participation in or attendance at extracurricular activities that may qualify for the tuition and textbook tax credit:

(1) Fees for participation in school sport activities.

(2) Fees for field trips.

(3) Rental fees for instruments for school bands or orchestras but not rental fees in rent-to-own contracts.

(4) Driver's education fees, if paid to a school.

(5) Cost of activity tickets or admission tickets to school sports, music and dramatic events.

(6) Fees for events such as homecoming, winter formal, prom, or similar events.

(7) Rental of costumes for school plays.

(8) Purchase of costumes for school plays if the costumes are not suitable for street wear.

(9) Purchase of track shoes, football shoes, or other athletic shoes with cleats, spikes, or other features that are not suitable for street wear.

(10) Costs of tickets or other admission fees to attend banquets or buffets for school academic or athletic awards.

(11) Trumpet grease, woodwind reeds, guitar picks, violin strings and similar types of items for maintenance of instruments used in school bands or orchestras.

(12) Band booster club or athletic booster club dues, but only if dues are for the dependent attending the school and not the parent or adult.

(13) Rental of formal gown or tuxedo for school dance or other school event.

(14) Dues paid to school clubs or school-sponsored organizations such as chess club, photography club, debate club, or similar organizations.

(15) Amounts paid for music that will be used in school music programs, including vocal music programs.

(16) Fees paid for general materials for shop class, agriculture class, home economics class, or auto repair class and general fees for equivalent classes.

(17) Fees for a dependent's bus trips to attend school if paid to the school.

b. The following are specific examples of expenditures related to a dependent's participation in or attendance at extracurricular activities that will not qualify for the tuition and textbook credit.

(1) Purchase of a musical instrument used in a school band or orchestra.

(2) Purchase of basketball shoes or other athletic shoes that are readily adaptable to street wear.

(3) Amounts paid for special testing such as SAT or PSAT, and for Iowa talent search tests.

(4) Payments for senior trips, band trips, and other overnight school activity trips which involve payment for meals and lodging.

(5) Fees paid to K-12 schools for courses for college credit.

(6) Amounts paid for T-shirts, sweatshirts and similar clothing that is appropriate for street wear.

(7) Amounts paid for special programs at universities and colleges for high school boys or girls.

(8) Payment for private instrumental lessons, voice lessons or similar lessons.

(9) Amounts paid for a school yearbook, annual or class ring.

(10) Fees for special materials paid for shop class, agriculture class, auto repair class, home economics class and similar classes. For purposes of this paragraph, "special materials" means materials used for personal projects of the dependents, such as materials to make furniture for personal use, automobile parts for family automobiles and other materials for projects for personal or family benefit.

This rule is intended to implement Iowa Code section 422.12.

701—42.23(422) Deduction of credits. The credits against computed tax set forth in Iowa Code sections 422.5, 422.8, 422.10 through 422.12C, and 422.110 shall be deducted in the following sequence:

1. Personal exemption credits.
2. Tuition and textbook credit.
3. Nonresident and part-year resident credit.
4. Franchise tax credit.
5. S corporation apportionment credit.
6. School tuition organization tax credit.
7. Venture capital credits.
8. Endow Iowa tax credit.
9. Agricultural assets transfer tax credit.
10. Film qualified expenditure tax credit.
11. Film investment tax credit.
12. Investment tax credit.
13. Wind energy production tax credit.
14. Renewable energy tax credit.
15. New jobs credit.
16. Economic development region revolving fund tax credit.
17. Charitable conservation contribution tax credit.
18. Alternative minimum tax credit.
19. Historic preservation and cultural and entertainment district tax credit (refundable portion).
20. Ethanol blended gasoline tax credit or ethanol promotion tax credit.
21. Research activities credit.
22. Assistive device credit.

23. Out-of-state tax credit.
24. Child and dependent care credit or early childhood development tax credit.
25. Motor fuel credit.
26. Claim of right credit (if elected in accordance with rule 701—38.18(422)).
27. Wage-benefits tax credit.
28. Soy-based cutting tool oil tax credit.
29. Refundable portion of investment tax credit, as provided in subrule 42.2(10), paragraph *"b."*
30. E-85 gasoline promotion tax credit.
31. Biodiesel blended fuel tax credit.
32. Soy-based transformer fluid tax credit.
33. Earned income tax credit.
34. Estimated payments, payment with vouchers and withholding tax.

This rule is intended to implement Iowa Code sections 422.5, 422.8, 422.10, 422.11, 422.11A, 422.11B, 422.11C, 422.11D, 422.11E, 422.11F, 422.11G, 422.11H, 422.11I, 422.11J, 422.11K, 422.11L, 422.11M, 422.11O, 422.11P, 422.11R, 422.11S, 422.11T, 422.11U, 422.12, 422.12B and 422.12C and 2008 Iowa Acts, House File 2700, section 62.

701—42.24(15I,422) Wage-benefits tax credit. Effective for tax years ending on or after June 9, 2006, a wage-benefits tax credit equal to a percentage of the annual wages and benefits paid for a qualified new job created by the location or expansion of the business in Iowa is available for qualified businesses.

42.24(1) *Definitions.* The following definitions are applicable to this rule:

"Average county wage" means the annualized average hourly wage calculated by the Iowa department of economic development using the most current four quarters of wage and employment information as provided in the Quarterly Covered Wage and Employment Data report provided by the department of workforce development. Agricultural/mining and governmental employment categories are deleted in compiling the wage information.

"Benefits" means all of the following:

1. Medical and dental insurance plans.
2. Pension and profit-sharing plans.
3. Child care services.
4. Life insurance coverage.
5. Vision insurance plan.
6. Disability coverage.

"Department" means the Iowa department of revenue.

"Full-time" means the equivalent of employment of one person:

1. For 8 hours per day for a 5-day, 40-hour workweek for 52 weeks per year, including paid holidays, vacations, and other paid leave, or

2. The number of hours or days per week, including paid holidays, vacations, and other paid leave, currently established by schedule, custom or otherwise, as constituting a week of full-time work for the kind of service an individual performs for an employing unit.

"Grow Iowa values fund" means the grow Iowa values fund created in Iowa Code Supplement section 15G.108.

"Nonqualified new job" means any one of the following:

1. A job previously filled by the same employee in Iowa.
2. A job that was relocated from another location in Iowa.
3. A job that is created as a result of a consolidation, merger, or restructuring of a business entity if the job does not represent a new job in Iowa.

"Qualified new job" or *"job creation"* means a job that meets all of the following criteria:

1. Is a new full-time job that has not existed in the business within the previous 12 months in Iowa.
2. Is filled by a new employee for at least 12 months.
3. Is filled by a resident of the state of Iowa.
4. Is not created as a result of a change in ownership.

5. Was created on or after June 9, 2005.

"Retail business" means a business which sells its product directly to a consumer.

"Retained qualified new job" or *"job retention"* means the continued employment, after the first 12 months of employment, of the same employee in a qualified new job for another 12 months.

"Service business" means a business which is not engaged in the sale of tangible personal property, and which provides services to a local consumer market and does not have a significant proportion of its sales coming from outside the state.

42.24(2) *Calculation of credit.* A business which is not a retail or service business may claim the wage-benefits tax credit which is determined as follows:

a. If the annual wages and benefits for the qualified new job equal less than 130 percent of the average county wage, the credit is 0 percent of the annual wage and benefits paid.

b. If the annual wages and benefits for the qualified new job equal at least 130 percent but less than 160 percent of the average county wage, the credit is 5 percent of the annual wage and benefits paid for each qualified new job.

c. If the annual wages and benefits for the qualified new job equal at least 160 percent of the average county wage, the credit is 10 percent of the annual wage and benefits paid for each qualified new job.

If the business is a partnership, S corporation, limited liability company, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit. The amount claimed by the individual shall be based upon the pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

42.24(3) *Application for the tax credit, tax credit certificate and amount of tax credit available.*

a. In order to claim the wage-benefits tax credit, the business must submit an application to the department along with information on the qualified new job or retained qualified new job. The application cannot be submitted until the end of the twelfth month after the qualified job was filled. For example, if the new job was created on June 9, 2005, the application cannot be submitted until June 9, 2006. The following information must be submitted in the application:

(1) Name, address and federal identification number of the business.

(2) A description of the activities of the business. If applicable, the proportion of the sales of the business which come from outside Iowa should be included.

(3) The amount of wages and benefits paid to each employee for each new job for the previous 12 months.

(4) A computation of the amount of credit being requested.

(5) The address and state of residence of each new employee.

(6) The date that the qualified new job was filled.

(7) An indication of whether the job is a qualified new job or a retained qualified new job for which an application was filed for a previous year.

(8) The type of tax for which the credit will be applied.

(9) If the business is a partnership, S corporation, limited liability company, or estate or trust, a schedule of the partners, shareholders, members or beneficiaries. This schedule shall include the names, addresses and federal identification number of the partners, shareholders, members or beneficiaries, along with their percentage of the pro-rata share of earnings of the partnership, S corporation, limited liability company, or estate or trust.

b. Upon receipt of the application, the department has 45 days either to approve or disapprove the application. If the department does not act on the application within 45 days, the application is deemed to be approved. If the department disapproves the application, the business may appeal the decision to the Iowa economic development board within 30 days of the notice of disapproval.

c. If the application is approved, or if the Iowa economic development board approves the application that was previously denied by the department, a tax credit certificate will be issued by the department to the business, subject to the availability of the amount of credits that may be issued. The

tax credit certificate will contain the name, address and tax identification number of the business (or individual, estate or trust, if applicable), the date of the qualified new job(s), the wage and benefits paid for each job(s) for the 12-month period, the amount of the credit, the tax period for which the credit may be applied, and the type of tax for which the credit will be applied.

d. The tax credit certificates that are issued in a fiscal year cannot exceed $10 million for the fiscal year ending June 30, 2007, and shall not exceed $4 million for the fiscal years ending June 30, 2008, through June 30, 2011. The tax credit certificates are issued on a first-come, first-served basis. Therefore, if tax credit certificates have already been issued for the $10 million limit for the fiscal year ending June 30, 2007, any applications for tax credit certificates received after the $10 million limit has been reached will be denied. Similarly, if tax credit certificates have already been issued for the $4 million limit for the fiscal years ending June 30, 2008, through June 30, 2011, any applications for tax credit certificates received after the $4 million limit has been reached will be denied. If a business failed to receive all or a part of the tax credit due to the $10 million or $4 million limitation, the business may reapply for the tax credit for the retained new job for a subsequent tax period.

e. A business which qualifies for the tax credit for the fiscal year ending June 30, 2007, is eligible to receive the tax credit certificate for each of the fiscal years ending June 30, 2008, through June 30, 2011, subject to the $4 million limit for tax credits for the fiscal years ending June 30, 2008, through June 30, 2011, if the business retains the qualified new job during each of the fiscal years ending June 30, 2008, through June 30, 2011. The business must reapply by June 30 of each fiscal year for the tax credit, and the percentage of the wages and benefits allowed for the credit set forth in subrule 42.24(2) for the first year is applicable for each subsequent period. Preference will be given in issuing tax credit certificates for those businesses that retain qualified new jobs, and preference will be given in the order in which applications were filed for the fiscal year ending June 30, 2007. Therefore, those businesses which received the first $4 million of tax credits for the year ending June 30, 2007, in which the qualified jobs were created will automatically receive a tax credit for the fiscal years ending June 30, 2008, through June 30, 2011, as long as the qualified jobs are retained and an application is completed.

f. For the fiscal years ending June 30, 2008, through June 30, 2011, if credits become available because the jobs were not retained by businesses which received the first $4 million of credits for the year ending June 30, 2007, an application which was originally denied will be considered in the order in which the application was received for the fiscal year ending June 30, 2007.

EXAMPLE: Wage-benefits tax credits of $4 million are issued for the fiscal year ending June 30, 2007, relating to applications filed between July 1, 2006, and March 31, 2007. For the next fiscal year ending June 30, 2008, the same businesses that received the $4 million in wage-benefits tax credits filed applications totaling $3 million for the retained jobs for which the application for the prior year was filed on or before March 31, 2007. The first $3 million of the available $4 million will be allowed to these same businesses. The remaining $1 million that is still available for the year ending June 30, 2008, will be allowed for those retained jobs for which applications for the prior year were filed starting on April 1, 2007, until the remaining $1 million in tax credits is issued.

g. A business may apply in writing to the Iowa economic development board for a waiver of the average wage and benefit requirement. See 261—subrule 68.3(2) for more detail on the procedures to apply for a waiver of the wage and benefit requirement. If a waiver is granted, the business must provide the department with the waiver and it must be attached to the application.

h. A business may receive other federal, state, and local incentives and tax credits in addition to the wage-benefits tax credit. However, a business that receives a wage-benefits tax credit cannot receive tax incentives under the high quality job creation program set forth in Iowa Code chapter 15 as amended by 2005 Iowa Acts, chapter 150, or moneys from the grow Iowa values fund.

42.24(4) *Examples.* The following noninclusive examples illustrate how this rule applies:

EXAMPLE 1: Business A operates a grocery store and hires five new employees, each of whom will earn wages and benefits in excess of 130 percent of the average county wage. Business A would not qualify for the wage-benefits tax credit because Business A is a retail business.

EXAMPLE 2: Business B operates an accounting firm and hires two new accountants, each of whom will earn wages and benefits in excess of 160 percent of the average county wage. The accounting firm

provides services to clients wholly within Iowa. Business B would not qualify for the wage-benefits tax credit because it is a service business. The majority of its sales are generated from within the state of Iowa and thus Business B, because it is a service business, is not eligible for the credit.

EXAMPLE 3: Business C operates a software development business and hires two new programmers, each of whom will earn wages and benefits in excess of 160 percent of the average county wage. Over 50 percent of the customers of Business C are located outside Iowa. Business C would qualify for the wage-benefits tax credit because a majority of its sales are coming from outside the state, even though Business C is engaged in the performance of services.

EXAMPLE 4: Business D is a manufacturer that hires a new employee in Clayton County, Iowa, on July 8, 2005. The average county wage for Clayton County for the third quarter of 2005 is $11.86 per hour. If the average county wage per hour for Clayton County is $11.95 for the fourth quarter of 2005, $12.05 for the first quarter of 2006, and $12.14 for the second quarter of 2006, the annualized average county wage for this 12-month period is $12.00 per hour. This wage equates to an average annual wage of $24,960 ($12.00 × 40 hours × 52 weeks). In order to qualify for the 5 percent wage-benefits tax credit, the new employee must receive wages and benefits totaling $32,448 (130 percent of $24,960) for the 12-month period from July 8, 2005, through July 7, 2006. In order to qualify for the 10 percent wage-benefits tax credit, the new employee must receive wages and benefits totaling $39,936 (160 percent of $24,960) for the 12-month period from July 8, 2005, through July 7, 2006.

EXAMPLE 5: Business E is a manufacturer that hires three new employees in Grundy County, Iowa, on July 1, 2005. If the average county wage for the 12-month period from July 1, 2005, through June 30, 2006, is $13.75 per hour in Grundy County, this wage equates to an average county wage of $28,600. The wages and benefits for each of these three new employees is $40,000 for the period from July 1, 2005, through June 30, 2006, which is 140 percent of the average county wage. Business E is entitled to a wage-benefits tax credit of $2,000 for each employee ($40,000 × 5 percent), for a total wage-benefits tax credit of $6,000. If Business E files on a calendar-year basis, the $6,000 wage-benefits tax credit can be claimed on the tax return for the period ending December 31, 2006.

EXAMPLE 6: Business F is a manufacturer that hires ten new employees on July 1, 2005, and qualifies for the wage-benefits tax credit because the wages and benefits paid exceed 130 percent of the average county wage. Business F receives a wage-benefits tax credit in July 2006 for these ten employees, which can be used on the tax return for the period ending December 31, 2006. On August 31, 2006, two of the employees leave the business and are replaced by two new employees. Business F is entitled to a wage-benefits tax credit for only eight employees in July 2007 because only eight employees continued employment for the subsequent 12 months, which meets the definition of a retained qualified new job. Business F cannot request a wage-benefits tax credit for the two employees hired on August 31, 2006. Business F cannot request the wage-benefits tax credit because these two full-time jobs existed in the business within the previous 12 months in Iowa, and these jobs do not meet the definition of a qualified new job or retained qualified new job.

EXAMPLE 7: Business G is a manufacturer that hires ten new employees on July 1, 2005, and qualifies for the wage-benefits tax credit because the wages and benefits paid exceed 130 percent of the average county wage. Business G receives a wage-benefits tax credit in July 2006 for these ten employees equal to 5 percent of the wages and benefits paid. On October 1, 2006, Business G hires an additional five employees, each of whom receives wages and benefits in excess of 130 percent of the average county wage. Business G can apply for the wage-benefits tax credit on October 1, 2007, for these five employees, since these employees have now been employed for 12 months. However, the credit may not be allowed if more than $4 million of retained job applications is received for the fiscal year ending June 30, 2008.

EXAMPLE 8: Assume the same facts as Example 6, except that the $10 million limit of tax credits has already been met for the fiscal year ending June 30, 2007, and Business F hired five new employees on August 31, 2006. Business F can apply for the wage-benefits tax credit for the three employees on August 31, 2007, a number which is above the ten full-time jobs originally created, but Business F may not receive the tax credit if more than $4 million of retained job applications is received for the fiscal year ending June 30, 2008.

EXAMPLE 9: Assume the same facts as Example 7, except that the ten employees hired on July 1, 2005, by Business G received wages and benefits equal to 155 percent of the average county wage, and the five employees hired on October 1, 2006, by Business G received wages equal to 161 percent of the average county wage. Business G can apply for the tax credit on October 1, 2007, equal to 10 percent of the wages and benefits paid for the employees hired on October 1, 2006. On July 1, 2007, Business G can reapply for the tax credit equal to 5 percent of the wages and benefits paid only for the ten employees originally hired on July 1, 2005, even if the wages and benefits for these ten employees exceed 160 percent of the average county wage for the period from July 1, 2006, through June 30, 2007.

42.24(5) *Repeal of the wage-benefits tax credit.* The wage-benefits tax credit is repealed effective July 1, 2008. However, the wage-benefits tax credit is still available through the fiscal year ending June 30, 2011, as provided in subrule 42.24(3), paragraphs *"d," "e,"* and *"f."* A business is not entitled to a wage-benefits tax credit for a qualified new job created on or after July 1, 2008.

This rule is intended to implement Iowa Code chapter 15I as amended by 2008 Iowa Acts, House File 2700, section 167, and Iowa Code section 422.11L.

701—42.25(422,476B) Wind energy production tax credit. Effective for tax years beginning on or after July 1, 2006, an owner of a qualified wind energy production facility that has been approved by the Iowa utilities board may claim a wind energy production tax credit for qualified electricity sold by the owner or used for on-site consumption against a taxpayer's Iowa individual income tax liability. The administrative rules for the certification of eligibility for the wind energy production tax credit for the Iowa utilities board may be found in rule 199—15.18(476B).

42.25(1) *Application and review process for the wind energy production tax credit.* An owner of a wind energy production facility must be approved by the Iowa utilities board in order to qualify for the wind energy production tax credit. The facility must be an electrical production facility that produces electricity from wind, is located in Iowa, and must be placed in service on or after July 1, 2005, but before July 1, 2012. For applications filed on or after March 1, 2008, a facility must consist of one or more wind turbines which have a combined nameplate generating capacity of at least two megawatts. In addition, the facility must also be approved by the board of supervisors of the county in which the facility is located. Once the owner receives the approval from the board of supervisors, approval is not required for subsequent tax periods.

The wind energy production tax credit cannot be allowed for a facility for which the owner has claimed an exemption from property tax under Iowa Code section 427B.26 or 441.21(8) or claimed an exemption from sales tax under Iowa Code section 423.3(54). The facility will be subject to the assessment of property tax in accordance with rule 701—80.13(427B).

The maximum amount of nameplate generating capacity for all qualified wind energy production facilities cannot exceed 450 megawatts of nameplate generating capacity. An owner shall not own more than two qualified facilities. A facility that is not operational within 18 months after issuance of the approval from the Iowa utilities board will no longer be considered a qualified facility. However, a facility that is not operational within 18 months due to the unavailability of necessary equipment shall be granted an additional 12 months to become operational.

An owner of the qualified facility must apply to the Iowa utilities board for the wind energy production tax credit. The application for the tax credit must be filed no later than 30 days after the close of the tax year for which the credit is applied. The information to be included in the application is set forth in 199—subrule 15.20(1).

42.25(2) *Computation of the credit.* The wind energy production credit equals one cent multiplied by the number of kilowatt-hours of qualified electricity sold or used for on-site consumption by the owner during the tax year. For the first tax year in which the credit is applied, the kilowatt-hours of qualified electricity sold may exceed 12 months.

EXAMPLE: A qualified facility was placed in service on April 1, 2006, and the taxpayer files on a calendar-year basis. The first year for which the credit can be claimed is the period ending December 31, 2007, since that is the first tax year that began on or after July 1, 2006. The credit for the 2007 tax year can include electricity sold between April 1, 2006, and December 31, 2007.

The credit is not allowed for any kilowatt-hours of electricity sold to a related person. The definition of "related person" uses the same criteria set forth in Section 45(e)(4) of the Internal Revenue Code relating to the federal renewable electricity production credit. Persons shall be treated as related to each other if such persons are treated as a single employer under Treasury Regulation §1.52-1. In the case of a corporation that is a member of an affiliated group of corporations filing a federal consolidated return, such corporation shall be treated as selling electricity to an unrelated person if such electricity is sold to the person by another member of the affiliated group.

The utilities board will notify the department of the number of kilowatt-hours of electricity sold by the qualified facility or generated and used on site by the qualified facility during the tax year. The department will calculate the credit and issue a tax credit certificate to the owner. The tax credit certificate will include the taxpayer's name, address and federal identification number, the tax type for which the credit will be claimed, the amount of the credit and the tax year for which the credit may be claimed. In addition, the tax credit certificate will include a place for the name and tax identification number of a transferee and the amount of the tax credit certificate, as provided in subrule 42.25(3). If the department refuses to issue the tax credit certificate, the taxpayer shall be notified in writing and the taxpayer will have 60 days from the date of denial to file a protest in accordance with rule 701—7.41(17A). The department will not issue a tax credit certificate if the facility is not operational within 18 months after approval was given by the utilities board.

If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners, members, shareholders or beneficiaries based on the partner's, member's, shareholder's or beneficiary's pro-rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust, except when the taxpayer is eligible to receive renewable electricity production tax credits authorized under Section 45 of the Internal Revenue Code. In cases where the taxpayer is eligible to receive renewable electricity production tax credits under Section 45 of the Internal Revenue Code, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder. In addition, if a taxpayer is a partnership, limited liability company, S corporation, or estate or trust that is eligible to receive renewable electricity production tax credits under Section 45 of the Internal Revenue Code, the taxpayer may distribute the tax credit to an equity holder or beneficiary as a liquidating distribution or portion thereof, of an equity holder's interest in the partnership, limited liability company or S corporation, or the beneficiary's interest in the estate or trust.

The credit can be allowed for a ten-year period beginning on the date the qualified facility was originally placed in service. For example, if a facility was placed in service on April 1, 2006, the credit can be claimed for kilowatt-hours of electricity sold between April 1, 2006, and March 31, 2016.

To claim the tax credit, the taxpayer must attach the tax credit certificate to the tax return for the tax year set forth on the certificate. Any tax credit in excess of the tax liability may be carried forward for seven years or until it is used, whichever is the earlier.

42.25(3) *Transfer of the wind energy production tax credit certificate.* The wind energy production tax credit certificate may be transferred to any person or entity.

Within 30 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department will issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the wind energy production tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries. The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have

the same effective taxable year and the same expiration date as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

This rule is intended to implement Iowa Code section 422.11J and chapter 476B as amended by 2008 Iowa Acts, Senate File 2405.

701—42.26(422,476C) Renewable energy tax credit. Effective for tax years beginning on or after July 1, 2006, a purchaser or producer of renewable energy whose facility has been approved by the Iowa utilities board may claim a renewable energy tax credit for qualified renewable energy against a taxpayer's Iowa individual income tax liability. The administrative rules for the certification of eligibility for the renewable energy tax credit for the Iowa utilities board may be found in rule 199—15.19(476C).

42.26(1) *Application and review process for the renewable energy tax credit.* A producer or purchaser of a renewable energy facility must be approved by the Iowa utilities board in order to qualify for the renewable energy credit. The eligible renewable energy facility can be a wind energy conversion facility, biogas recovery facility, biomass conversion facility, methane gas recovery facility, solar energy conversion facility or refuse conversion facility. The facility must be located in Iowa and placed in service on or after July 1, 2005, and before January 1, 2012.

The maximum amount of nameplate generating capacity of all wind energy conversion facilities cannot exceed 180 megawatts of nameplate generating capacity. The maximum amount of energy production capacity for biogas recovery facilities, biomass conversion facilities, methane gas recovery facilities, solar energy conversion facilities and refuse conversion facilities cannot exceed a combined output of 20 megawatts of nameplate generating capacity and 167 billion British thermal units of heat for a commercial purpose. A facility that is not operational within 30 months after issuance of approval from the utilities board will no longer be considered a qualified facility. A producer of renewable energy, which is the person who owns the renewable energy facility, cannot own more than two eligible renewable energy facilities. A person that has an equity interest equal to or greater than 51 percent in an eligible renewable energy facility cannot have an equity interest greater than 10 percent in any other renewable energy facility.

A producer or purchaser of a renewable energy facility must apply to the utilities board for the renewable energy tax credit. The application for the tax credit must be filed no later than 30 days after the close of the tax year for which the credit is applied. The information to be included in the application is set forth in 199—subrule 15.21(1).

42.26(2) *Computation of the credit.* The renewable energy tax credit equals 1½ cents per kilowatt-hour of electricity, or 44 cents per 1000 standard cubic feet of hydrogen fuel, or $4.50 per 1 million British thermal units of methane gas or other biogas used to generate electricity, or $4.50 per 1 million British thermal units of heat for a commercial purpose generated by and purchased from an eligible renewable energy facility during the tax year. For the first tax year in which the credit is applied, the kilowatt-hours, standard cubic feet or British thermal units generated by and purchased from the facility may exceed 12 months.

EXAMPLE: A qualified wind energy production facility was placed in service on April 1, 2006, and the taxpayer files on a calendar-year basis. The first year for which the credit can be claimed is the year ending December 31, 2007, since that is the first tax year that began on or after July 1, 2006. The credit for the 2007 tax year can include electricity generated and purchased between April 1, 2006, and December 31, 2007.

The credit is not allowed for any kilowatt-hours, standard cubic feet or British thermal units that are purchased from an eligible facility by a related person. Persons shall be treated as related to each other if either person owns an 80 percent or more equity interest in the other person.

The utilities board will notify the department of the number of kilowatt-hours, standard cubic feet or British thermal units that are generated and purchased from an eligible facility during the tax year. The department will calculate the credit and issue a tax credit certificate to the purchaser or producer. The tax credit certificate will include the taxpayer's name, address and federal identification number, the tax type for which the credit will be claimed, the amount of the credit and the tax year for which the credit may be claimed. In addition, the tax credit certificate will include a place for the name and tax identification number of a transferee and the amount of the tax credit certificate, as provided in subrule 42.26(3). If the department refuses to issue the tax credit certificate, the taxpayer shall be notified in writing and the taxpayer will have 60 days from the date of denial to file a protest in accordance with rule 701—7.41(17A). The department will not issue a tax credit certificate if the facility is not operational within 30 months after approval was given by the utilities board. In addition, the department will not issue a tax credit certificate to any person who received a wind energy production tax credit in accordance with Iowa Code chapter 476B.

If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners, members, shareholders or beneficiaries based on the partner's, member's, shareholder's or beneficiary's pro-rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust, except when the taxpayer is eligible to receive renewable electricity production tax credits authorized under Section 45 of the Internal Revenue Code. In cases where the taxpayer is eligible to receive renewable electricity production tax credits under Section 45 of the Internal Revenue Code, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder. In addition, if a taxpayer is a partnership, limited liability company, S corporation, or estate or trust that is eligible to receive renewable electricity production tax credits under Section 45 of the Internal Revenue Code, the taxpayer may distribute the tax credit to an equity holder or beneficiary as a liquidating distribution or portion thereof, of an equity holder's interest in the partnership, limited liability company or S corporation, or the beneficiary's interest in the estate or trust.

The credit can be allowed for a ten-year period beginning on the date the qualified facility was originally placed in service. For example, if a renewable energy facility was placed in service on April 1, 2006, the credit can be claimed for kilowatt-hours, standard cubic feet or British thermal units generated and purchased between April 1, 2006, and March 31, 2016. Tax credit certificates cannot be issued for renewable energy purchased after December 31, 2021.

To claim the tax credit, the taxpayer must attach the tax credit certificate to the tax return for the tax period set forth on the certificate. Any tax credit in excess of the tax liability may be carried forward for seven years or until it is used, whichever is the earlier.

42.26(3) *Transfer of the renewable energy tax credit certificate.* The renewable energy tax credit certificate may be transferred once to any person or entity. A decision between a producer and purchaser of renewable energy regarding who may claim the tax credit is not considered a transfer.

Within 30 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department will issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the renewable energy tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries. The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have the same effective taxable year and the same expiration date as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

This rule is intended to implement Iowa Code section 422.11J and chapter 476C.

701—42.27(15) High quality job creation program. Effective for tax periods ending on or after July 1, 2005, a business which qualifies under the high quality job creation program is eligible to receive tax credits. The high quality job creation program replaces the new jobs and income program and the new capital investment program. An eligible business under the high quality job creation program must be approved by the Iowa department of economic development and meet the qualifications of Iowa Code Supplement section 15.329. The administrative rules for the high quality job creation program for the Iowa department of economic development may be found at 261—Chapter 68.

42.27(1) *Research activities credit.* An eligible business approved under the high quality job creation program is eligible for an additional research activities credit as described in 701—subrule 52.7(4).

Research activities allowable for the Iowa research activities credit include expenses related to the development and deployment of innovative renewable energy generation components manufactured or assembled in Iowa; such expenses related to the development and deployment of innovative renewable energy generation components are not eligible for the federal credit for increasing research activities. For purposes of this subrule, innovative renewable energy generation components do not include components with more than 200 megawatts in installed effective nameplate capacity. The research activities credit related to renewable energy generation components under the high quality job creation program and the enterprise zone program shall not exceed $1 million in the aggregate.

These expenses related to the development and deployment of innovative renewable energy generation components are applicable only to the additional research activities credit set forth in this subrule and are not applicable to the research activities credit set forth in subrule 42.2(11), paragraphs *"a"* and *"b."* The research activities credit is subject to the threshold amounts of qualifying investment set forth in Iowa department of economic development 261—subrule 68.4(7).

42.27(2) *Investment tax credit.*

a. General rule. An eligible business can claim an investment tax credit equal to a percentage of the new investment directly related to new jobs created by the location or expansion of an eligible business. The percentage is equal to the amount provided in Iowa department of economic development 261—subrule 68.4(7). New investment directly related to new jobs created by the location or expansion of an eligible business includes the following:

(1) The cost of machinery and equipment, as defined in Iowa Code section 427A.1(1), paragraphs *"e"* and *"j,"* purchased for use in the operation of the eligible business. The purchase price shall be depreciated in accordance with generally accepted accounting principles.

(2) The purchase price of real property and any buildings and structures located on the real property.

(3) The cost of improvements made to real property which is used in the operation of the eligible business.

In addition, certain lease payments made by eligible businesses to a third-party developer will be considered to be new investment for purposes of computing the investment tax credit. The eligible business shall enter into a lease agreement with the third-party developer for a minimum of five years. The investment tax credit is based on the annual base rent paid to a third-party developer by the eligible business for a period not to exceed ten years. The total costs of the annual base rent payments for the ten-year period cannot exceed the cost of the land and the third-party developer's cost to build or renovate the building used by the eligible business. The annual base rent is defined as the total lease payment less taxes, insurance and operating and maintenance expenses.

The investment tax credit can be claimed in the tax year in which the qualifying assets are placed in service. The investment tax credit will be amortized over a five-year period. Any credit in excess of the tax liability for the tax period may be carried forward seven years or until used, whichever is the earlier.

EXAMPLE: An eligible business which files tax returns on a calendar-year basis earned $100,000 of investment tax credits for new investment made in 2006. The business can claim $20,000 of investment tax credits for each of the years from 2006 through 2010. The $20,000 of investment tax credit that can be claimed in 2006 can be carried forward to the 2007-2013 tax years if the entire credit cannot be claimed on the 2006 return. Similarly, the $20,000 investment tax credit that can be claimed in 2007 can be carried forward to the 2008-2014 tax years if the entire credit cannot be claimed on the 2007 return.

If the business is a partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount of the credit claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or estate or trust electing to have the income taxed directly to an individual.

b. Investment tax credit—value-added agricultural products or biotechnology-related processes. An eligible business whose project primarily involves the production of value-added agricultural products or uses biotechnology-related processes may elect to receive a refund for all or a portion of an unused investment tax credit. An eligible business includes a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol.

Eligible businesses that elect to receive a refund shall apply to the Iowa department of economic development for tax credit certificates between May 1 and May 15 of each fiscal year. Only those businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. The Iowa department of economic development shall not issue tax credit certificates for more than $4 million during a fiscal year to eligible businesses for this program and the enterprise zone program described in subrule 42.2(10). If applications are received for more than $4 million, the applicants shall receive certificates for a prorated amount.

The Iowa department of economic development shall issue tax credit certificates within a reasonable period of time. Tax credit certificates are valid for the tax year following project completion. The tax credit certificate must be attached to the tax return for the tax year during which the tax credit is claimed. The tax credit certificate shall not be transferred, except for a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol, as provided in subrule 42.2(10). For value-added agricultural projects involving ethanol, the cooperative must submit a list of its members and the share of each member's interest in the cooperative. The Iowa department of economic development shall issue a tax credit certificate to each member on the list.

c. Repayment of benefits. If an eligible business fails to maintain the requirements of the high quality job creation program, the taxpayer may be required to repay all or a portion of the tax incentives taken on Iowa returns. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the tax credits may have expired, the department may proceed to collect the tax incentives forfeited by failure of the eligible business to maintain the requirements of the high quality job creation program because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability.

An eligible business in the high quality job creation program may also be required to repay all or a portion of the tax incentives received on Iowa returns if the eligible business experiences a layoff of employees in Iowa or closes any of its facilities in Iowa.

If, within five years of purchase, the eligible business sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which a tax credit was claimed under this subrule, the income tax liability of the eligible business shall be increased by one of the following amounts:

(1) One hundred percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within one full year after being placed in service.

(2) Eighty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within two full years after being placed in service.

(3) Sixty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within three full years after being placed in service.

(4) Forty percent of the tax credit claimed if the property ceases to be eligible for the tax credit within four full years after being placed in service.

(5) Twenty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within five full years after being placed in service.

42.27(3) *Determination of tax credit amounts.* The amount of tax credit claimed under the high quality job creation program shall be based on the number of high quality jobs created and the amount of qualifying investment made as determined by the Iowa department of economic development.

a. If the high quality jobs have a starting wage, including benefits, equal to or greater than 130 percent of the average county wage but less than 160 percent of the average county wage, see Iowa department of economic development 261—paragraph 68.4(7)*"a"* for the amount of tax credits that may be claimed.

b. If the high quality jobs have a starting wage, including benefits, equal to or greater than 160 percent of the average county wage, see Iowa department of economic development 261—paragraph 68.4(7)*"b"* for the amount of tax credits that may be claimed.

c. An eligible business approved under the high quality job creation program is not eligible for the wage-benefits tax credit set forth in rule 701—42.25(15H).

This rule is intended to implement Iowa Code Supplement chapter 15.

701—42.28(15E,422) Economic development region revolving fund tax credit. Effective for tax years ending on or after July 1, 2005, a taxpayer who makes a contribution to an economic development region revolving fund may claim a tax credit, subject to the availability of the credit. The tax credit is equal to 20 percent of a taxpayer's contribution to the economic development region revolving fund approved by the Iowa department of economic development. The administrative rules for the economic development region revolving fund tax credit for the Iowa department of economic development may be found at 261—Chapter 32.

The total amount of economic development region revolving fund tax credits available shall not exceed $2 million per fiscal year. The tax credit shall not be carried back to a tax year prior to the year in which the taxpayer redeems the credit. The economic development region revolving fund tax credit is not transferable to any other taxpayer.

Any tax credit in excess of the tax liability for the tax year may be credited to the tax liability for the following ten years or until used, whichever is the earlier.

If a taxpayer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code Supplement sections 15E.232 and 422.11K.

701—42.29(422) Early childhood development tax credit. Effective for tax years beginning on or after January 1, 2006, taxpayers may claim a tax credit equal to 25 percent of the first $1,000 of expenses paid to others for early childhood development for each dependent three to five years of age. The credit is available only to taxpayers whose net income is less than $45,000. If a taxpayer claims the early childhood development tax credit, the taxpayer cannot claim the child and dependent care credit described in rule 701—42.9(422). The early childhood development tax credit is refundable to the extent that the credit exceeds the taxpayer's income tax liability. For the tax year beginning in the 2006 calendar year only, amounts paid for early childhood development expenses in November and December of 2005 shall be considered paid in 2006 for purposes of computing the credit.

For married taxpayers who elect to file separately on a combined form or elect to file separate returns for Iowa tax purposes, the combined income of the taxpayers must be less than $45,000 to be eligible for the credit. If the combined income is less than $45,000, the early childhood development tax credit shall be prorated to each spouse in the proportion that each spouse's respective net income bears to the total combined income.

42.29(1) *Expenses eligible for the credit.* The following expenses qualify for the early childhood development tax credit, to the extent they are paid during the time period that a dependent is either three, four or five years of age:

a. Expenses for services provided by a preschool, as defined in Iowa Code section 237A.1. The preschool may only provide services for periods of time not exceeding three hours per day.

b. Books that improve child development, including textbooks, music books, art books, teacher editions and reading books.

c. Expenses paid for instructional materials required to be used in a child development or educational lesson activity. These materials include, but are not limited to, paper, notebooks, pencils, and art supplies. In addition, software and toys which are directly and primarily used for educational or learning purposes are considered instructional materials.

d. Expenses paid for lesson plans and curricula.

e. Expenses paid for child development and educational activities outside the home. These activities include, but are not limited to, drama, art, music and museum activities, including the entrance fees for such activities.

42.29(2) *Expenses not eligible for the credit.* The following expenses do not qualify for the early childhood development tax credit:

a. Any expenses paid to a preschool once a dependent reaches the age of six.

b. Expenses relating to food, lodging, membership fees, or other nonacademic expenses relating to child development and educational activities outside the home.

c. Expenses related to services, materials, or activities for the teaching of religious tenets, doctrines, or worship, in cases where the purpose of the teaching is to inculcate the religious tenets, doctrines, or worship.

This rule is intended to implement Iowa Code section 422.12C as amended by 2005 Iowa Acts, chapter 148, and as amended by 2006 Iowa Acts, House File 2794, sections 24 and 25.

701—42.30(422) School tuition organization tax credit. Effective for the tax year beginning on or after January 1, 2006, but beginning before January 1, 2007, a school tuition organization tax credit is available which is equal to 65 percent of the amount of the voluntary cash contributions made by a taxpayer to a school tuition organization. For tax years beginning on or after January 1, 2007, the school tuition organization tax credit is available that is equal to 65 percent of the amount of voluntary cash or noncash contributions made by a taxpayer to a school tuition organization. There are numerous federal revenue regulations, rulings, court cases and other provisions relating to the determination of the value of a noncash contribution, and these are equally applicable to the determination of the amount of a school tuition organization tax credit for tax years beginning on or after January 1, 2007.

42.30(1) *Definitions.* The following definitions are applicable to this rule:

"Certified enrollment" means the enrollment at schools served by school tuition organizations as of October 1, or the first Monday in October if October 1 falls on a Saturday or Sunday, of the appropriate year.

"Contribution" means a voluntary cash or noncash contribution to a school tuition organization that is not used for the direct benefit of any dependent of the taxpayer or any other student designated by the taxpayer.

"Eligible student" means a student residing in Iowa who is a member of a household whose total annual income during the calendar year prior to the school year in which the student receives a tuition grant from a school tuition organization does not exceed an amount equal to three times the most recently published federal poverty guidelines in the Federal Register by the United States Department of Health and Human Services.

"Qualified school" means a nonpublic elementary or secondary school in Iowa which is accredited under Iowa Code section 256.11, including a prekindergarten program for students who are five years of age by September 15 of the appropriate year, and adheres to the provisions of the federal Civil Rights Act of 1964 and Iowa Code chapter 216, and which is represented by only one school tuition organization.

"School tuition organization" means a charitable organization in Iowa that is exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code and that does all of the following:

1. Allocates at least 90 percent of its annual revenue in tuition grants for children to allow them to attend a qualified school of their parents' choice.
2. Awards tuition grants only to children who reside in Iowa.
3. Provides tuition grants to students without limiting availability to students of only one school.
4. Provides tuition grants only to eligible students.
5. Prepares an annual financial statement certified by a public accounting firm.

"Tuition grant" means a grant to a student to cover all or part of the student's tuition at a qualified school.

42.30(2) *Initial registration.* In order for contributions to a school tuition organization to qualify for the credit, the school tuition organization must initially register with the department. The following information must be provided with this initial registration:

a. Verification from the Internal Revenue Service that Section 501(c)(3) status was granted and that the school tuition organization is exempt from federal income tax.

b. A list of all qualified schools that the school tuition organization serves.

c. The names and addresses of the seven members of the board of directors of the school tuition organization.

Once the school tuition organization is registered with the department, it is not required to subsequently register unless there is a change in the qualified schools that the organization serves. The school tuition organization must notify the department by letter of any changes in the qualified schools it serves.

42.30(3) *Participation forms.* Each qualified school that is served by a school tuition organization must annually submit a participation form to the department by November 1. The following information must be provided with this participation form:

a. The certified enrollment of the qualified school as of October 1, or the first Monday in October if October 1 falls on a Saturday or Sunday.

b. The name of the school tuition organization that represents the qualified school.

For the tax year beginning in the 2006 calendar year only, each qualified school served by a school tuition organization must submit to the department a participation form postmarked on or before August 1, 2006, which provides the certified enrollment as of the third Friday of September 2005, along with the name of the school tuition organization that represents the qualified school.

42.30(4) *Authorization to issue tax credit certificates.*

a. By December 1 of each year, the department will authorize school tuition organizations to issue tax credit certificates for the following tax year. For the tax year beginning in the 2006 calendar year only, the department, by September 1, 2006, will authorize school tuition organizations to issue tax credit certificates for the 2006 calendar year only. The total amount of tax credit certificates that may be authorized is $2.5 million for the 2006 calendar year, $5.0 million for the 2007 calendar year, and $7.5 million for the 2008 and subsequent calendar years.

b. The amount of authorized tax credit certificates for each school tuition organization is determined by dividing the total amount of tax credit available by the total certified enrollment of all qualified participating schools. This result, which is the per-student tax credit, is then multiplied by the certified enrollment of each school tuition organization to determine the tax credit authorized to each school tuition organization.

EXAMPLE: For determining the authorized tax credits for the 2008 calendar year, if the certified enrollment of each qualified school in Iowa, as provided to the department by November 1, 2007, were 37,500, the per-student tax credit would be $200 ($7.5 million divided by 37,500). If a school tuition organization located in Scott County represents four qualified schools with a certified enrollment of 1,400 students, the school tuition organization would be authorized to issue $280,000 ($200 times 1,400) of tax credit certificates for the 2008 calendar year. The department would notify this school tuition organization by December 1, 2007, of the authorization to issue $280,000 of tax credit certificates for the 2008 calendar year. This authorization would allow the school tuition organization to solicit

contributions totaling $430,769 ($280,000 divided by 65%) during the 2008 calendar year which would be eligible for the tax credit.

42.30(5) *Issuance of tax credit certificates.* The school tuition organization shall issue tax credit certificates to each taxpayer who made a cash or noncash contribution to the school tuition organization. The tax credit certificate, which will be designed by the department, will contain the name, address and tax identification number of the taxpayer, the amount and date that the contribution was made, the amount of the credit, the tax year that the credit may be applied, the school tuition organization to which the contribution was made, and the tax credit certificate number.

42.30(6) *Claiming the tax credit.* The taxpayer must attach the tax credit certificate to the tax return for which the credit is claimed. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

a. The taxpayer may not claim an itemized deduction for charitable contributions for Iowa income tax purposes for the amount of the contribution made to the school tuition organization.

b. Married taxpayers who file separate returns or file separately on a combined return must allocate the school tuition organization tax credit to each spouse in the proportion that each spouse's respective net income bears to the total combined net income. Nonresidents or part-year residents of Iowa must determine the school tuition organization tax credit in the ratio of their Iowa source net income to their total source net income. In addition, if nonresidents or part-year residents of Iowa are married and elect to file separate returns or to file separately on a combined return, the school tuition organization tax credit must be allocated between the spouses in the ratio of each spouse's Iowa source net income to the combined Iowa source net income.

42.30(7) *Reporting requirements.* Each school tuition organization that issues tax credit certificates must report to the department, postmarked by January 12 of each tax year, the following information:

a. The names and addresses of the seven members of the board of directors of the school tuition organization, along with the name of the chairperson of the board.

b. The total number and dollar value of contributions received by the school tuition organization for the previous tax year.

c. The total number and dollar value of tax credit certificates issued by the school tuition organization for the previous tax year.

d. A list of each taxpayer who received a tax credit certificate for the previous tax year, including the amount of the contribution and the amount of tax credit issued to each taxpayer for the previous tax year. This list should also include the tax identification number of the taxpayer and the tax credit certificate number for each certificate.

e. The total number of children utilizing tuition grants for the school year in progress as of January 12, along with the total dollar value of the tuition grants.

f. The name and address of each qualified school represented by the school tuition organization at which tuition grants are being utilized for the school year in progress.

g. The number of tuition grant students and the total dollar value of tuition grants being utilized for the school year in progress at each qualified school served by the school tuition organization.

This rule is intended to implement Iowa Code section 422.11S as amended by 2007 Iowa Acts, House File 923, section 13, and Senate File 601, section 111.

701—42.31(422) E-85 gasoline promotion tax credit. Effective for tax years beginning on or after January 1, 2006, a retail dealer of gasoline may claim an E-85 gasoline promotion tax credit. "E-85 gasoline" means ethanol blended gasoline formulated with a minimum percentage of between 70 percent and 85 percent of volume of ethanol, if the formulation meets the standards provided in Iowa Code section 214A.2. For purposes of this rule, tank wagon sales are considered retail sales. The credit is calculated on Form IA135. The credit is calculated by multiplying the total number of E-85 gallons sold by the retail dealer during the tax year by the following designated rates:

Calendar years 2006, 2007 and 2008	25 cents
Calendar years 2009 and 2010	20 cents
Calendar year 2011	10 cents
Calendar year 2012	9 cents
Calendar year 2013	8 cents
Calendar year 2014	7 cents
Calendar year 2015	6 cents
Calendar year 2016	5 cents
Calendar year 2017	4 cents
Calendar year 2018	3 cents
Calendar year 2019	2 cents
Calendar year 2020	1 cent

A taxpayer may claim the E-85 gasoline promotion tax credit even if the taxpayer also claims the ethanol blended gasoline tax credit provided in rule 42.16(422) for gallons sold prior to January 1, 2009, or the ethanol promotion tax credit provided in rule 42.37(422) for gallons sold on or after January 1, 2009, for the same tax year for the same ethanol gallons.

Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

EXAMPLE: A taxpayer operated one retail motor fuel site in 2006 and sold 200,000 gallons of gasoline, of which 160,000 gallons was ethanol blended gasoline. Of these 160,000 gallons, 1,000 gallons was E-85 gasoline. Taxpayer may claim the E-85 gasoline promotion tax credit on the 1,000 gallons of E-85 gasoline sold during 2006. Taxpayer is also entitled to claim the ethanol blended gasoline tax credit of two and one-half cents multiplied by 40,000 gallons, since this constitutes the gallons in excess of 60 percent of the total gasoline gallons sold for the 2006 tax year.

42.31(1) *Fiscal year filers.* For taxpayers whose tax year is not on a calendar year basis, the taxpayer may compute the tax credit on the gallons of E-85 gasoline sold during the year using the designated rates as shown above. Because the tax credit is repealed on January 1, 2021, a taxpayer whose tax year ends prior to December 31, 2020, may continue to claim the tax credit in the following tax year for any E-85 gallons sold through December 31, 2020. For a retail dealer whose tax year is not on a calendar year basis and who did not claim the E-85 credit on the previous return, the dealer may claim the credit for the current tax year for the period beginning on January 1 of the previous tax year until the last day of the previous tax year.

See 701—subrule 52.30(1) for examples illustrating how this subrule is applied.

42.31(2) *Allocation of credit to owners of a business entity.* If a taxpayer claiming the E-85 ethanol promotion tax credit is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement 2006 Iowa Acts, House File 2754, section 40.

701—42.32(422) Biodiesel blended fuel tax credit. Effective for tax years beginning on or after January 1, 2006, a retail dealer of biodiesel blended fuel may claim a biodiesel blended fuel tax credit. "Biodiesel blended fuel" means a blend of biodiesel with petroleum-based diesel fuel which meets the standards provided in Iowa Code section 214A.2. The biodiesel blended fuel must be formulated with a minimum percentage of 2 percent by volume of biodiesel, if the formulation meets the standards provided by section 214A.2, to qualify for the tax credit. In addition, of the total gallons of diesel fuel sold by the retail dealer, 50 percent or more must be biodiesel blended fuel to be eligible for the tax credit for tax years beginning prior to January 1, 2009. For tax years beginning on or after January 1, 2009, the biodiesel blended fuel

tax credit is calculated separately for each retail motor fuel site for which 50 percent or more of the total gallons of diesel fuel sold at the motor fuel site was biodiesel blended fuel.

The tax credit equals three cents multiplied by the qualifying number of biodiesel blended fuel gallons sold by the taxpayer during the tax year. For purposes of this rule, tank wagon sales are considered retail sales. The credit is calculated on Form IA8864.

Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

EXAMPLE: A taxpayer operated four retail motor fuel sites during 2006 and sold a combined total at all four sites of 100,000 gallons of diesel fuel, of which 55,000 gallons was biodiesel blended fuel containing a minimum percentage of 2 percent by volume of biodiesel. Because 50 percent or more of the diesel fuel sold was biodiesel blended fuel, the taxpayer may claim the biodiesel blended fuel tax credit totaling $1,650, which is 55,000 gallons multiplied by three cents.

EXAMPLE: A taxpayer operated two retail motor fuel sites during 2006, and each site sold 40,000 gallons of diesel fuel. One site sold 25,000 gallons of biodiesel blended fuel, and the other site sold 10,000 gallons of biodiesel blended fuel. The taxpayer would not be eligible for the biodiesel blended fuel tax credit because only 35,000 gallons of the total 80,000 gallons, or 43.75 percent of the total diesel fuel gallons sold, was biodiesel blended fuel. The 50 percent requirement is based on the aggregate number of diesel fuel gallons sold by the taxpayer, and the fact that one retail motor fuel site met the 50 percent requirement does not allow the taxpayer to claim the biodiesel blended fuel tax credit for the 2006 tax year. If the facts in this example had occurred during the 2009 tax year, the taxpayer could claim a biodiesel blended fuel tax credit totaling $750, which is 25,000 gallons multiplied by three cents, since one of the retail motor fuel sites met the 50 percent biodiesel blended fuel requirement.

42.32(1) *Fiscal year filers.* For taxpayers whose tax year is not on a calendar-year basis and whose tax year ends before December 31, 2006, the taxpayer may compute the tax credit on the gallons of biodiesel blended fuel sold during the period from January 1, 2006, through the end of the tax year, provided that 50 percent of all diesel fuel sold during that period was biodiesel blended fuel. Because the tax credit is repealed on January 1, 2012, a taxpayer whose tax year ends prior to December 31, 2011, may continue to claim the tax credit in the following tax year for any biodiesel blended fuel sold through December 31, 2011, provided that 50 percent of diesel fuel sold at qualifying retail motor fuel sites during that period was biodiesel blended fuel.

See 701—subrule 52.31(1) for examples illustrating how this subrule is applied.

42.32(2) *Allocation of credit to owners of a business entity.* If a taxpayer claiming the biodiesel blended fuel tax credit is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code Supplement section 422.11P as amended by 2008 Iowa Acts, House File 2689, sections 31 and 32.

701—42.33(422) Soy-based transformer fluid tax credit. Effective for tax periods ending after June 30, 2006, and beginning before January 1, 2009, an electric utility may claim a soy-based transformer fluid tax credit. An electric utility, which is a public utility, city utility, or electric cooperative which furnishes electricity, may claim a credit equal to the costs incurred during the tax year for the purchase and replacement costs relating to the transition from using nonsoy-based transformer fluid to using soy-based transformer fluid.

42.33(1) *Eligibility requirements for the tax credit.* All of the following conditions must be met for the electric utility to qualify for the soy-based transformer fluid tax credit.

a. The costs must be incurred after June 30, 2006, and before January 1, 2009.

b. The costs must be incurred in the first 18 months of the transition from using nonsoy-based transformer fluid to using soy-based transformer fluid.

c. The soy-based transformer fluid must be dielectric fluid that contains at least 98 percent soy-based products.

d. The costs of the purchase and replacement must not exceed $2 per gallon of soy-based transformer fluid used in the transition.

e. The number of gallons used in the transition must not exceed 20,000 gallons per electric utility, and the total number of gallons eligible for the credit must not exceed 60,000 gallons in the aggregate.

f. The electric utility shall not deduct for Iowa income tax purposes the costs incurred in the transition to using soy-based transformer fluid which are deductible for federal income tax purposes.

42.33(2) *Applying for the tax credit.* An electric utility must apply to the department for the soy-based transformer fluid tax credit. The application for the tax credit must be filed no later than 30 days after the close of the tax year for which the credit is claimed. The application must include the following information:

a. A copy of the signed purchase agreement or other agreement to purchase soy-based transformer fluid.

b. The number of gallons of soy-based transformer fluid purchased during the tax year, along with the cost per gallon of each purchase made during the tax year.

c. The name, address, and tax identification number of the electric utility.

d. The type of tax for which the credit will be claimed, and the first year in which the credits will be claimed.

e. If the application is filed by a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, a list of the partners, members, shareholders or beneficiaries of the entity. This list shall include the name, address, tax identification number and pro-rata share of earnings from the entity for each of the partners, members, shareholders or beneficiaries.

42.33(3) *Claiming the tax credit.* After the application is reviewed, the department will issue a tax credit certificate to the electric utility. The tax credit certificate will include the taxpayer's name, address and federal identification number, the tax type for which the credit will be claimed, the amount of the credit and the tax year for which the credit may be claimed. Once the tax credit certificate is issued, the credit may be claimed only against the type of tax reflected on the certificate. If the department refuses to issue the tax credit certificate, the taxpayer shall be notified in writing; and the taxpayer will have 60 days from the date of denial to file a protest in accordance with rule 701—7.41(17A).

If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners, members, shareholders or beneficiaries based on the partner's, member's, shareholder's or beneficiary's pro-rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust.

Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

This rule is intended to implement Iowa Code Supplement section 422.11R as amended by 2008 Iowa Acts, Senate File 572.

701—42.34(175,422) Agricultural assets transfer tax credit. Effective for tax years beginning on or after January 1, 2007, an owner of agricultural assets that rents assets to qualified beginning farmers may claim an agricultural assets transfer tax credit for Iowa individual income tax. The credit is equal to 5 percent of the rental income received by the owner for cash rental agreements, and the credit is equal to 15 percent of the rental income received by the owner for commodity share agreements. The administrative rules for the agricultural assets transfer tax credit for the Iowa agricultural development authority may be found under 25—Chapter 6.

To qualify for the tax credit, an owner of agricultural assets must enter into a lease or rental agreement with a beginning farmer for a term of at least two years, but not more than five years. Both the owner of agricultural assets and the beginning farmer must meet certain qualifications set forth by the Iowa agricultural development authority, and the beginning farmer must be eligible to receive financial assistance under Iowa Code section 175.12.

The Iowa agricultural development authority will issue a tax credit certificate to the owner of agricultural assets which will include the name, address and tax identification number of the owner, the

amount of the credit, and the tax period for which the credit may be applied. To claim the tax credit, the owner must attach the tax credit certificate to the tax return for the tax period set forth on the certificate.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier. The tax credit shall not be carried back to a tax year prior to the year in which the owner redeems the credit. The credit is not transferable to any other person other than the taxpayer's estate or trust upon the death of the taxpayer.

If an owner of agricultural assets is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

The lease or rental agreement may be terminated by either the owner or the beginning farmer. If the agricultural development authority determines that the owner is not at fault for the termination, the authority will not issue a tax credit certificate for subsequent years, but any prior tax credit certificates issued will be allowed. If the authority determines that the owner is at fault for the termination, any prior tax credit certificates will be disallowed. The amount of tax credits previously allowed will be recaptured, and the owner will be required to repay the entire amount of tax credits previously claimed on Iowa returns.

This rule is intended to implement Iowa Code sections 175.37 and 422.11M.

701—42.35(15,422) Film qualified expenditure tax credit. Effective for tax years beginning on or after January 1, 2007, a film qualified expenditure tax credit is available for individual income tax. The tax credit is equal to 25 percent of the taxpayer's qualified expenditures in a film, television, or video project registered with the film office of the Iowa department of economic development (IDED). The administrative rules for the film qualified expenditure tax credit for IDED may be found at 261—Chapter 36.

42.35(1) *Qualified expenditures.* A qualified expenditure is a payment to an Iowa resident or an Iowa-based business for the sale, rental or furnishing of tangible personal property or services directly related to the registered project. The qualified expenditures include, but are not limited to, the following:

1. Aircraft.
2. Vehicles.
3. Equipment.
4. Materials.
5. Supplies.
6. Accounting services.
7. Animals and animal care services.
8. Artistic and design services.
9. Graphics.
10. Construction.
11. Data and information services.
12. Delivery and pickup services.
13. Labor and personnel, excluding the director, producers, or cast members other than extras and stand-ins.
14. Lighting services.
15. Makeup and hairdressing services.
16. Film.
17. Music.
18. Photography.
19. Sound.
20. Video and related services.
21. Printing.
22. Research.
23. Site fees and rental.

24. Travel related to Iowa distant locations.
25. Trash removal and cleanup.
26. Wardrobe.

A detailed list of all qualified expenditures for each of these categories is available on Form Z, Schedule of Qualified Expenses, which is available from the film office of IDED.

42.35(2) *Claiming the tax credit.* Upon completion of the registered project in Iowa, the taxpayer must submit to the film office a completed Form Z, Schedule of Qualified Expenses, or an alternative to Form Z in a format approved by IDED prior to production, listing the qualified expenditures. Upon verification of the qualified expenditures, IDED will issue a tax credit certificate to the taxpayer. The certificate will list the taxpayer's name, address, and tax identification number; the date of project completion; the amount of the credit; the tax period for which the credit may be applied; and the type of tax for which the credit will be applied.

If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners, members, shareholders or beneficiaries based on each partner's, member's, shareholder's or beneficiary's pro-rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust.

To claim the tax credit, the taxpayer must attach the tax credit certificate to the tax return for the tax period set forth on the certificate. Any tax credit in excess of the tax liability may be carried forward for five years or until the tax credit is used, whichever is the earlier. The tax credit cannot be carried back to a tax year prior to the year in which the taxpayer claimed the tax credit.

42.35(3) *Transfer of the film qualified expenditure tax credit.* The film qualified expenditure tax credit may be transferred no more than two times to any person or entity.

Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department of revenue, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department of revenue will issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the film qualified expenditure tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries. The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have the same effective taxable year as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

This rule is intended to implement 2007 Iowa Acts, House File 892, sections 3 and 5.

701—42.36(15,422) Film investment tax credit. Effective for tax years beginning on or after January 1, 2007, a film investment tax credit is available for individual income tax. The tax credit is equal to 25 percent of the taxpayer's investment in a film, television, or video project registered with the film office of the Iowa department of economic development (IDED). The administrative rules for the film investment tax credit for IDED may be found at 261—Chapter 36.

42.36(1) *Claiming the tax credit.* Upon completion of the project in Iowa and verification of the investment in the project, IDED will issue a tax credit certificate to the taxpayer. The certificate will list the taxpayer's name, address, and tax identification number; the date of project completion; the amount of the credit; the tax period for which the credit may be applied; and the type of tax for which the credit will be applied.

If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners, members, shareholders or beneficiaries based on each partner's, member's, shareholder's or beneficiary's pro-rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust.

To claim the tax credit, the taxpayer must attach the tax credit certificate to the tax return for the tax period set forth on the certificate. Any tax credit in excess of the tax liability may be carried forward for five years or until the tax credit is used, whichever is the earlier. The tax credit cannot be carried back to a tax year prior to the year in which the taxpayer claimed the tax credit. In addition, a taxpayer cannot claim the film investment tax credit for qualified expenditures for which the film expenditure tax credit set forth in rule 701—42.35(15,422) is claimed.

The total of all film investment tax credits for a particular project cannot exceed 25 percent of the qualified expenditures as set forth in subrule 42.35(1) for the particular project. If the amount of investment exceeds the qualified expenditures, the tax credit will be allocated proportionately. For example, if three investors each invested $100,000 in a project but the qualified expenditures in Iowa only totaled $270,000, each investor would receive a tax credit based on a $90,000 investment amount.

42.36(2) *Transfer of the film investment tax credit.* The film investment tax credit may be transferred no more than two times to any person or entity.

Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department of revenue, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department of revenue will issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the film investment tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries. The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have the same effective taxable year as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

This rule is intended to implement 2007 Iowa Acts, House File 892, sections 3 and 6.

701—42.37(422) Ethanol promotion tax credit. Ethanol promotion tax credit. Effective for tax years beginning on or after January 1, 2009, a retail dealer of gasoline may claim an ethanol promotion tax credit. For purposes of this rule, tank wagon sales are considered retail sales. The ethanol promotion tax credit is computed on Form IA137.

42.37(1) *Definitions* The following definitions are applicable to this rule:

"Biodiesel gallonage" means the total number of gallons of biodiesel which the retail dealer sells from motor fuel pumps during a determination period. For example, 5,000 gallons of biodiesel blended fuel with a 2 percent by volume of biodiesel sold during a determination period results in a biodiesel gallonage of 100 (5,000 times 2%).

"Biofuel distribution percentage" means the sum of the retail dealer's total ethanol gallonage plus the retail dealer's total biodiesel gallonage expressed as a percentage of the retail dealer's total gasoline gallonage.

"Biofuel threshold percentage" is dependent on the aggregate number of gallons of motor fuel sold by a retail dealer during a determination period, as set forth below:

Determination Period	More than 200,000 Gallons Sold by Retail Dealer	200,000 Gallons or Less Sold by Retail Dealer
2009	10%	6 %
2010	11%	6 %
2011	12%	10%
2012	13%	11%
2013	14%	12%
2014	15%	13%
2015	17%	14%
2016	19%	15%
2017	21%	17%
2018	23%	19%
2019	25%	21%
2020	25%	25%

"Biofuel threshold percentage disparity" means the positive percentage difference between the retail dealer's biofuel threshold percentage and the retail dealer's biofuel distribution percentage. For example, if a retail dealer that sells more than 200,000 gallons of motor fuel in 2009 has a biofuel distribution percentage of 8 percent, the biofuel threshold percentage disparity equals 2 percent (10% minus 2%).

"Determination period" means any 12-month period beginning on January 1 and ending on December 31.

"Ethanol gallonage" means the total number of gallons of ethanol which the retail dealer sells from motor fuel pumps during a determination period. For example, 10,000 gallons of ethanol blended gasoline formulated with a 10 percent by volume of ethanol sold during a determination period results in an ethanol gallonage of 1,000 (10,000 gallons times 10%).

"Gasoline gallonage" means the total number of gallons of gasoline sold by the retail dealer during a determination period.

42.37(2) *Calculation of tax credit.*

a. The tax credit is calculated by multiplying the retail dealer's total ethanol gallonage by the tax credit rate, which is adjusted based upon the retail dealer's biofuel threshold percentage disparity. The tax credit rate is set forth below:

Biofuel Threshold Percentage Disparity	Tax Credit Rate Per Gallon
0%	6.5 cents
0.01% to 2.00%	4.5 cents
2.01% to 4.00%	2.5 cents
4.01% or more	0 cents

b. For use in calculating a retail dealer's total ethanol gallonage, the department is required to establish a schedule regarding the average amount of ethanol contained in E-85 gasoline.

c. A taxpayer may claim the ethanol promotion tax credit even if the taxpayer also claims the E-85 gasoline promotion tax credit provided in rule 42.31(422) for the same tax year for the same ethanol gallons.

d. The tax credit must be calculated separately for each retail motor fuel site operated by the taxpayer. The biofuel threshold percentage disparity of the taxpayer is computed on a statewide basis

based on the total ethanol gallonage sold in Iowa. The taxpayer must determine the ethanol gallonage sold at each retail motor fuel site and multiply this ethanol gallonage by the applicable tax credit rate based on the biofuel threshold percentage disparity to calculate the ethanol promotion tax credit.

e. Any tax credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming a refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

42.37(3) *Fiscal year filers* For taxpayers whose tax year is not on a calendar year basis, the taxpayer may compute the ethanol promotion tax credit on the total ethanol gallonage sold during the year using the designated tax credit rates as shown in subrule 42.37(2), paragraph *"a."* Because the tax credit is repealed on January 1, 2021, a taxpayer whose tax year ends prior to December 31, 2020, may continue to claim the tax credit in the following tax year for the total ethanol gallonage sold through December 31, 2020. For a taxpayer whose tax year is not on a calendar year basis and that did not claim the ethanol promotion tax credit on the previous return, the taxpayer may claim the tax credit for the current tax year for the period beginning on January 1 of the previous tax year until the last day of the previous tax year.

42.37(4) *Allocation of tax credit to owners of a business entity.* If a taxpayer claiming the ethanol promotion tax credit is a partnership, limited liability company, S corporation, estate, or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by the individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, estate, or trust.

42.37(5) *Examples.* The following noninclusive examples illustrate how this rule applies:

EXAMPLE 1. A taxpayer that is a retail dealer of gasoline operates only one motor fuel site in Iowa. The number of gallons of gasoline sold at this site in 2009 equals 100,000 gallons. This consisted of 5,000 gallons of E-85 gasoline, 80,000 gallons of E-10 (10% ethanol blended gasoline) and 15,000 gallons not containing ethanol. The average ethanol content of E-85 gasoline is assumed to be 79%. The taxpayer also sold at this site during 2009 15,000 gallons of diesel fuel, of which 5,000 gallons was B-2 (2% biodiesel). The ethanol gallonage is 11,950 (5,000 E-85 gallons times 79% equals 3,950; 80,000 E-10 gallons times 10% equals 8,000; and thus 3,950 plus 8,000 equals 11,950). The biodiesel gallonage sold is 100, or 5,000 times 2%. The sum of 11,950 and 100, or 12,050, is divided by the total gasoline gallonage of 100,000 to arrive at a biofuel distribution percentage of 12.05%. Since this exceeds the biofuel threshold percentage of 6% for a retail dealer selling 200,000 gallons or less, the biofuel threshold disparity percentage is 0%. This results in an ethanol promotion tax credit of 6.5 cents times 11,950, or $776.75.

In addition, the taxpayer is entitled to claim the E-85 gasoline promotion tax credit equal to 20 cents multiplied by 5,000 gallons, or $1,000.

EXAMPLE 2. A taxpayer that is a retail dealer of gasoline operates only one motor fuel site in Iowa. The number of gallons of gasoline sold at this site in 2010 equals 300,000 gallons. This consisted of 10,000 gallons of E-85 gasoline, 230,000 gallons of E-10 (10% ethanol blended gasoline) and 60,000 gallons not containing ethanol. The average ethanol content of E-85 gasoline is assumed to be 79%. The taxpayer also sold at this site during 2010 60,000 gallons of diesel fuel, of which 25,000 gallons was B-2 (2% biodiesel). The ethanol gallonage is 30,900 (10,000 E-85 gallons times 79% equals 7,900; 230,000 E-10 gallons times 10% equals 23,000; and thus 7,900 plus 23,000 equals 30,900). The biodiesel gallonage sold is 500, or 25,000 times 2%. The sum of 30,900 and 500, or 31,400, is divided by the total gasoline gallonage of 300,000 to arrive at a biofuel distribution percentage of 10.47%. Since this is less than the biofuel threshold percentage of 11% for a retail dealer selling more than 200,000 gallons, the biofuel threshold disparity percentage is .53%. This results in an ethanol promotion tax credit of 4.5 cents times 30,900, or $1,390.50.

In addition, the taxpayer is entitled to claim the E-85 gasoline promotion tax credit equal to 20 cents multiplied by 10,000 gallons, or $2,000.

EXAMPLE 3. A taxpayer that is a retail dealer of gasoline operates three motor fuel sites in Iowa during 2009, and each site sold 80,000 gallons of gasoline. Sites A and B each sold 70,000 gallons of E-10 (10% ethanol blended gasoline) and 10,000 gallons not containing ethanol. Site C sold 60,000 gallons of E-10, 10,000 gallons of E-85, and 10,000 gallons not containing ethanol. The average ethanol

content of E-85 gasoline is assumed to be 79%. The retail dealer did not sell any diesel fuel at any of the motor fuel sites. The ethanol gallonage is 27,900, as shown below:

Site A – 70,000 times 10% equals	7,000
Site B – 70,000 times 10% equals	7,000
Site C – 60,000 times 10% equals	6,000
Site C – 10,000 times 79% equals	7,900
Total	27,900

The ethanol gallonage of 27,900 is divided by the gasoline gallonage of 240,000 to arrive at a biofuel distribution percentage of 11.63%. Since this exceeds the biofuel threshold percentage of 10% for a retail dealer selling more than 200,000 gallons, the biofuel threshold disparity percentage is 0%. The credit is computed separately for each motor fuel site, and the ethanol promotion credit equals $1,813.50, as shown below:

Site A – 7,000 times 6.5 cents equals	$455.00
Site B – 7,000 times 6.5 cents equals	$455.00
Site C – 13,900 times 6.5 cents equals	$903.50
Total	$1,813.50

Since the biofuel distribution percentage and the biofuel threshold percentage disparity are computed on a statewide basis for all gallons sold in Iowa, the 6.5 cent tax credit rate is applied to the total ethanol gallonage, even if Sites A and B did not meet the biofuel threshold percentage of 10% for 2009.

In addition, the taxpayer is entitled to claim the E-85 gasoline promotion tax credit equal to 20 cents multiplied by 10,000 gallons, or $2,000.

EXAMPLE 4. A taxpayer that is a retail dealer of gasoline has a fiscal year ending March 31, 2011, and operates one motor fuel site in Iowa. The taxpayer sold more than 200,000 gallons of gasoline during the 2010 calendar year and expects to sell more than 200,000 gallons of gasoline during the 2011 calendar year. The ethanol gallonage is 30,000 for the period from April 1, 2010, through December 31, 2010, and the ethanol gallonage is 8,000 for the period from January 1, 2011, through March 31, 2011. The biofuel distribution percentage is 11.5% for the period from April 1, 2010, through December 31, 2010, and the biofuel distribution percentage is 11.8% for the period from January 1, 2011, through March 31, 2011. This results in a biofuel threshold percentage disparity of 0% (11.0 minus 11.5) for the period from April 1, 2010, through December 31, 2010, and a biofuel threshold percentage disparity of .2% (12.0 minus 11.8) for the period from January 1, 2011, through March 31, 2011. The taxpayer is entitled to an ethanol promotion tax credit of $2,310 for the fiscal year ending March 31, 2011, as shown below:

30,000 times 6.5 cents equals	$1,950
8,000 times 4.5 cents equals	360
Total	$2,310

EXAMPLE 5. A taxpayer that is a retail dealer of gasoline has a fiscal year ending April 30, 2009, and operates one motor fuel site in Iowa. The taxpayer expects to sell more than 200,000 gallons of gasoline during the 2009 calendar year. The ethanol gallonage is 50,000 gallons for the period from January 1, 2009, through April 30, 2009. The biofuel distribution percentage is 7.7% for the period from January 1, 2009, through April 30, 2009, which results in a biofuel threshold percentage disparity of 2.3% (10.0 minus 7.7). The taxpayer is entitled to claim an ethanol promotion tax credit of $1,250 (50,000 gallons times 2.5 cents) on the taxpayer's Iowa income tax return for the period ending April 30, 2009.

In lieu of claiming the credit on the return for the period ending April 30, 2009, the taxpayer may claim the ethanol promotion tax credit on the tax return for the period ending April 30, 2010, including the ethanol gallonage for the period from January 1, 2009, through April 30, 2010. In this case, the taxpayer will compute the biofuel distribution percentage for the period from January 1, 2009, through

December 31, 2009, to determine the proper tax credit rate to be applied to the ethanol gallonage for the period from January 1, 2009, through December 31, 2009.

This rule is intended to implement Iowa Code Supplement section 422.11N.

701—42.38(422) Charitable conservation contribution tax credit. Effective for tax years beginning on or after January 1, 2008, a charitable conservation contribution tax credit is available for individual income tax which is equal to 50 percent of the fair market value of a qualified real property interest located in Iowa that is conveyed as an unconditional charitable donation in perpetuity by a taxpayer to a qualified organization exclusively for conservation purposes.

42.38(1) *Definitions.* The following definitions are applicable to this rule:

"Conservation purpose" means the same as defined in Section 170(h)(4) of the Internal Revenue Code, with the exception that a conveyance of land for open space for the purpose of fulfilling density requirements to obtain subdivision or building permits is not considered a conveyance for a conservation purpose.

"Qualified organization" means the same as defined in Section 170(h)(3) of the Internal Revenue Code.

"Qualified real property interest" means the same as defined in Section 170(h)(2) of the Internal Revenue Code. Conservation easements and bargain sales are examples of a qualified real property interest.

42.38(2) *Computation of the credit.* The credit equals 50 percent of the fair market value of the qualified real property interest. There are numerous federal revenue regulations, rulings, court cases and other provisions relating to the determination of the value of a qualified real property interest, and these are equally applicable in determining the amount of the charitable conservation contribution tax credit.

The maximum amount of the tax credit is $100,000. The amount of the contribution for which the tax credit is claimed shall not be claimed as an itemized deduction for charitable contributions for Iowa income tax purposes.

42.38(3) *Claiming the tax credit.* The tax credit is claimed on Form IA 148, Tax Credits Schedule. The taxpayer must attach a copy of federal Form 8283, Noncash Charitable Contributions, which reflects the calculation of the fair market value of the real property interest, to the Iowa return for the year in which the contribution is made. If a qualified appraisal of the property or other relevant information is required to be attached to federal Form 8283 for federal tax purposes, the appraisal and other relevant information must also be attached to the Iowa return.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following 20 years or until used, whichever is the earlier.

If the taxpayer claiming the credit is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

42.38(4) *Examples.* The following noninclusive examples illustrate how this rule applies:

EXAMPLE 1: A taxpayer conveys a real property interest with a fair market value of $150,000 to a qualified organization during 2008. The tax credit is equal to $75,000, or 50 percent of the $150,000 fair market value of the real property. The taxpayer cannot claim the $150,000 as an itemized deduction for charitable contributions on the Iowa individual income tax return for 2008.

EXAMPLE 2: A taxpayer conveys a real property interest with a fair market value of $500,000 to a qualified organization during 2009. The tax credit is limited to $100,000, which equates to $200,000 of the contribution being eligible for the tax credit. The remaining amount of $300,000 ($500,000 less $200,000) can be claimed as an itemized deduction for charitable contributions on the Iowa individual income tax return for 2009.

This rule is intended to implement 2008 Iowa Acts, House File 2700, section 62.

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◊ Two or more ARCs

CHAPTER 43
ASSESSMENTS AND REFUNDS
[Prior to 12/17/86, Revenue Department[730]]

701—43.1(422) Notice of discrepancies.

43.1(1) *Notice of adjustments.* A department employee designated by the director to examine returns and make audits who discovers discrepancies in returns or learns that the income of the taxpayer may not have been listed, in whole or in part, or that no return was filed when one was due is authorized to notify the taxpayer of this discovery by ordinary mail. The notice shall not be termed an assessment, and it may inform the taxpayer what amount would be due if the information discovered is correct.

43.1(2) *Right of taxpayer upon receipt of notice of adjustment.* A taxpayer who has received notice of an adjustment in connection with a return may pay the additional amount stated to be due. If payment is made, and the taxpayer wishes to contest the matter, the taxpayer should then file a claim for refund. However, payment will not be required until assessment has been made (although interest will continue to accrue if payment is not made). If no payment is made, the taxpayer may discuss with the agent, auditor, clerk or employee who notified the taxpayer of the discrepancy, either in person or through correspondence, all matters of fact and law which the taxpayer considers relevant to the situation. Documents and records supporting the taxpayer's position may be required.

43.1(3) Rescinded, effective 7/24/85.

This rule is intended to implement Iowa Code sections 422.25 and 422.30.

701—43.2(422) Notice of assessment, supplemental assessments and refund adjustments. If after following the procedure outlined in 43.1(2) no agreement is reached, and the taxpayer does not pay the amount determined to be correct, a notice of assessment shall be sent to the taxpayer by mail. If the period in which the correct amount of tax can be determined is nearly at an end, either a notice of assessment without compliance with 43.1(2) or a jeopardy assessment may be issued. All notices of assessment shall bear the signature of the director.

The department may, at any time within the period prescribed for assessment or refund adjustment, make a supplemental assessment or refund adjustment whenever it is ascertained that any assessment or refund adjustment is imperfect or incomplete in any respect.

If an assessment or refund adjustment is appealed (protested under rule 701—7.41(17A)) and is resolved whether by informal proceedings or by adjudication, the department and the taxpayer are precluded from making a supplemental assessment or refund adjustment concerning the same issue involved in the appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation. Nothing in this rule shall prevent the making of an assessment or refund adjustment for the purpose of taking into account the impact upon Iowa net income of federal audit adjustments.

This rule is intended to implement Iowa Code sections 422.25 and 422.30.

701—43.3(422) Overpayments of tax. The following are provisions for refunding or crediting to the taxpayer's deposits or payments for tax in excess of amounts legally due.

43.3(1) *Claims for refund.* A claim for refund is a formal request made by the taxpayer or the taxpayer's personal representative to the department of revenue for repayment of state income tax that was paid with the taxpayer's previously filed individual income tax return. In order for a claim for refund to be considered to be a valid document, the taxpayer or the taxpayer's personal representative must file the claim on an IA 1040X Amended Return Form or on an IA 1040 Income Tax Return Form for the appropriate tax year, with the notation "Amended for Refund" clearly shown on the face of the return form. The taxpayer or the taxpayer's personal representative must file the claim for refund with the department under separate cover so the claim is not filed with another tax return or with other documents or forms submitted to the department.

In addition, the claim for refund must be filed within one of the time periods specified in Iowa Code section 422.73(2) in order for the refund claim to be timely so that the claim may be considered on its merits by the department.

If the department determines that the taxpayer's claim is without merit and the claim for refund should be rejected, the department will notify the taxpayer or the taxpayer's personal representative by mail that the claim for refund has been rejected and of the reason for rejection. In addition, the rejection letter will advise the taxpayer that the taxpayer has 60 days from the date of the letter to file a protest of the department's rejection of the claim for refund. The taxpayer's appeal of the rejection of the claim for refund must be filed in accordance with rule 701—7.41(17A).

43.3(2) *Offsetting refunds.* A taxpayer shall not offset a refund or overpayment of tax for one year as a prior payment of tax of a subsequent year on the return of a subsequent year without authorization in writing by the department. The department, may, however, apply an overpayment, or a refund otherwise due the taxpayer, to any tax due or to become due from the taxpayer.

43.3(3) *Setoffs of qualifying debts administered by the department of administrative services.* Before any refund or rebate from a taxpayer's individual income tax return is considered for purposes of setoff, the refund or rebate must be applied first to any outstanding tax liability of that taxpayer with the department of revenue. After all outstanding tax liabilities are satisfied, any remaining balance of refund or rebate will be set off against any debt of the taxpayer, setoff of which is overseen by the department of administrative services pursuant to 2003 Iowa Acts, House File 534, section 86.

43.3(4) *College loan setoff.* Rescinded IAB 11/12/03, effective 12/17/03.

43.3(5) *District court debts setoff.* Rescinded IAB 11/12/03, effective 12/17/03.

43.3(6) *Overpayment credited to estimated tax.* Any remaining balance of overpayment, at the election of the taxpayer, will be refunded to the taxpayer or credited as a first payment of the taxpayer's estimated tax for the following year. However, a taxpayer may elect to credit an overpayment from a return to the estimated tax for the following tax year only in cases when the return is filed in the same calendar year that the return is due. For example, a taxpayer's 1994 return is due on April 30, 1995. If the taxpayer files that return on or before December 31, 1995, the taxpayer can elect to credit an overpayment on that return to estimated tax for 1995, and this election will be honored by the department. See also rule 701—49.7(422).

If an overpayment of income tax is shown as a credit to estimated tax for the succeeding taxable year, the amount shall be considered as a payment of the income tax for the succeeding taxable year and no claim for credit or refund of the overpayment shall be allowed on the return where the overpayment arose.

When a taxpayer elects to have an overpayment credited to estimated tax for the succeeding year, interest may properly be assessed on a deficiency of income tax for the year in which the overpayment arose. If a taxpayer elects to have all or part of an overpayment shown on the return applied to the estimated income tax for the succeeding taxable year, the election is binding to the taxpayer.

An overpayment of tax may be used to offset any outstanding tax liability owed by the taxpayer, but once an elected amount is credited as a payment of estimated tax for the succeeding year, it loses its character as an overpayment for the year in which it arose and thereafter cannot offset any subsequently determined tax liability.

43.3(7) *Refunds—statute of limitations for years ending before January 1, 1979.* Rescinded IAB 10/12/94, effective 11/16/94.

43.3(8) *Refunds—statute of limitations for tax years ending on or after January 1, 1979.* The statute of limitations with respect to which refunds or credit may be claimed are:

a. The later of

(1) Three years after due date of payment upon which refund or credit is claimed; or

(2) One year after which such payment was actually made.

b. Six months from the date of final disposition of any federal income tax matter with respect to the particular tax year. The taxpayer, however, must have notified the department of the matter within six months after the specified three-year period, contained in paragraph *"a,"* subparagraph (1), above. The term "matter" includes, but is not limited to, the execution of waivers and commencement of audits.

The refund is limited to those matters between the taxpayer and the Internal Revenue Service which affect Iowa taxable income. *Kelly-Springfield Tire Co. v. Iowa State Board of Tax Review*, 414 N.W.2d 113 (Iowa 1987).

c. For federal audits finalized on or after July 1, 1991, the taxpayer must claim a refund or credit within six months of final disposition of any federal income tax matter with respect to the particular tax year regardless when the tax year ended. It is not necessary for the taxpayer to have previously notified the department within the period of limitations specified in 43.3(8)*"a"*(1) above of a matter between the taxpayer and the Internal Revenue Service in order to receive a refund or credit. The term "matter" includes, but is not limited to, the execution of waivers and commencement of audits. The refund or credit is limited to those matters between the taxpayer and the Internal Revenue Service which affect Iowa taxable income. *Kelly-Springfield Tire Co. v. Iowa State Board of Tax Review*, 414 N.W. 2d 113 (Iowa 1987).

d. Three years after the date of the return for the year in which a net operating loss or capital loss occurs, which if carried back results in a reduction of tax in a prior period and an overpayment results.

43.3(9) *Refunds—statute of limitations for individuals who died as a result of hostile action.* Rescinded IAB 10/12/94, effective 11/16/94.

43.3(10) *Refunds—statute of limitations for MIAs and spouses of MIAs.* Rescinded IAB 10/12/94, effective 11/16/94.

43.3(11) *Refunds—statute of limitations for insolvent farmers who received capital gains from farmland sold in 1982 and 1983.* Rescinded IAB 10/12/94, effective 11/16/94.

43.3(12) *Refunds—statute of limitations for individuals with certain charitable contributions.* Rescinded IAB 10/12/94, effective 11/16/94.

43.3(13) *Refunds—statute of limitations for taxpayers who paid state income tax on 1988 returns on certain supplemental assistance payments.* Rescinded IAB 11/24/04, effective 12/29/04.

43.3(14) *Refunds—statute of limitations for taxpayers who paid state income tax on returns for tax years where federal income tax was refunded due to a provision of the Taxpayer Relief Act of 1997.* Notwithstanding the three-year statute of limitations in Iowa Code section 422.73, claims for refund filed with the department on or before June 30, 1999, will be considered timely if the taxpayer's federal income tax was refunded due to a provision in the Taxpayer Relief Act of 1997 which affected the federal adjusted gross income of an individual or an estate or a trust. This particular provision may affect Iowa returns for a tax year beginning on or after January 1, 1977, to the extent the federal adjusted gross incomes on federal returns for the tax year were affected by the Taxpayer Relief Act of 1997.

43.3(15) *Refunds—statute of limitations for taxpayers who paid 90 percent of the tax by the due date and filed the original return in the six-month extended period.* If a taxpayer has paid 90 percent of the income tax required to be shown due by the original due date of the return and has filed the original income tax return sometime in the six-month extended period after the original due date, the taxpayer may file an amended return by October 31 of the third year following the year the original return was due and shall be within the statute of limitations for refund. This position is supported by the Iowa Supreme Court in *Conoco, Inc. v. Iowa Department of Revenue and Finance*, 477 N.W.2d 377 (Iowa 1991). See also 701—subrule 39.2(4) which pertains to the extended period for filing the Iowa income tax return when 90 percent of the tax is paid by the original due date of the Iowa income tax return.

EXAMPLE 1. Joe Barnes had paid at least 90 percent of the tax shown due on his 1999 Iowa income tax return by the April 30 original due date and filed his original 1999 Iowa return on May 15, 2000. Mr. Barnes determined that he had failed to claim several deductions on the original 1999 Iowa return, so he filed an amended 1999 return on October 31, 2003. The amended return was filed within the three-year statute of limitations for refund since it was filed within three years of the extended due date of the return, October 31, 2000. The six-month extended due date applied in this case because the original return was filed within the six-month extended period.

EXAMPLE 2. Fred Jones paid 90 percent of the tax shown due on his 1999 return by the April 30 original due date and filed the original return on or before the April 30, 2000, original due date for this return. Mr. Jones determined that when he filed the original 1999 Iowa return, he failed to claim the Iowa income tax withheld from a part-time job he held in 1999. Mr. Jones filed an amended 1999 Iowa

return on May 15, 2003, to claim the Iowa tax withheld that he had failed to claim on the original return. This amended return was rejected by the department because it was not filed within three years of the due date of the return. Although Mr. Jones had paid 90 percent of the tax by the due date, the due date was not extended because the original return had been filed by the due date of April 30, 2000.

This rule is intended to implement Iowa Code section 421.17 as amended by 2003 Iowa Acts, House File 534, and sections 422.2, 422.16, and 422.73.

701—43.4(68A,422,456A) Optional designations of funds by taxpayer.

43.4(1) *Iowa fish and game protection fund.* The taxpayer may designate an amount to be donated to the Iowa fish and game protection fund. The donation must be $1 or more, and the designation must be made on the original return for the current year. The donation is allowed only after obligations of the taxpayer to the department of revenue, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, other state agencies, and the Iowa election campaign checkoff have been satisfied. The designation to the fund is irrevocable and cannot be made on an amended return. If the amount of refund claimed on the original return or the payment remitted with the return is adjusted by the department, the amount of the designation to the fund may be adjusted accordingly.

EXAMPLE A: Overpayment as shown on the original return is $50. $25 is designated to the fund. Due to an error on the return, only $20 is an overpayment. The taxpayer would not receive any refund and all $20 of the overpayment would be credited to the fund.

EXAMPLE B: Overpayment as shown on the original return is $50. $25 is designated to the fund. Due to an error on the return, no overpayment occurred, but instead the taxpayer owes $20. No money would be credited to the fund in this instance.

EXAMPLE C: Amount shown due on return is $30. $20 is designated to the fund. A $50 payment was made with the return. Due to an error on the return, the taxpayer owes $40. Only $10 would be credited to the fund in this situation.

43.4(2) *Iowa election campaign fund.* A person with a tax liability of $1.50 or more on the Iowa individual income tax return may direct or designate that a $1.50 contribution be made to a specific political party or that the contribution be made to the Iowa election campaign fund to be shared by all political parties as clarified further in this paragraph. In the case of married taxpayers filing a joint Iowa individual return with a tax liability of $3.00 or more, each spouse may direct or designate that a $1.50 contribution be made to a specific political party or that a $1.50 contribution be made to the Iowa election campaign fund as a contribution to be shared by all political parties. The designation or direction of a contribution to a political party or to the election campaign fund is irrevocable and cannot be changed on an amended return. The designation to a political party or the election campaign fund is allowed only after obligations of the taxpayer to the department of revenue, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts and other state agencies are satisfied. Note that for purposes of this subrule, "political party" means a party as defined in Iowa Code section 43.2.

In a tax year when there are two political parties for purposes of the Iowa election campaign fund, all undesignated contributions to the fund made on individual income tax returns for that tax year are to be divided equally between the two parties. In a tax year where there are more than two political parties for purposes of the Iowa election campaign fund, all undesignated contributions to the fund made on income tax returns for that tax year are to be divided among the political parties on the basis of the number of registered voters for a particular political party on December 31 of that tax year to the total number of registered voters on December 31 of that tax year that have declared an affiliation with any of the recognized political parties.

Thus, if there were 400,000 registered voters for "x" political party, 500,000 registered voters for "y" political party, and 100,000 registered voters for "z" political party on December 31 of a tax year where there were three recognized political parties, 40 percent of the undesignated political contributions

on 1997 returns would be paid to "x" political party since 40 percent of the registered voters with an affiliation to a political party on December 31 had an affiliation with party "x" on that day.

43.4(3) *Domestic abuse services checkoff.* For tax years beginning on or after January 1, 1991, but before January 1, 1996, and for tax years beginning on or after January 1, 1997, but before January 1, 2000, a taxpayer filing a state individual income tax return can designate a checkoff of $1 or more to the general fund of the state to be used for the purposes of providing services to victims of domestic abuse or sexual assault. If the overpayment on the return or the payment made with the filing of the return is not sufficient to cover the amount designated to the domestic abuse services checkoff, the amount credited to the domestic abuse services checkoff will be reduced accordingly. The designation to the domestic abuse services checkoff is irrevocable and cannot be revised on an amended return.

A designation to the domestic abuse services checkoff may be allowed only after obligations of the taxpayer to the department of revenue, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, other state agencies, the Iowa election campaign checkoff, the Iowa fish and game protection fund checkoff, and the state fair foundation checkoff are satisfied.

On or before January 31 of the year following the year in which returns with domestic abuse services checkoff are due, the department of revenue is to certify the total amount designated to the domestic abuse services checkoff to the state treasurer.

43.4(4) *State fair foundation checkoff.* For tax years beginning on or after January 1, 1993, a taxpayer filing a state individual income tax return can designate a checkoff of $1 or more to the Iowa state fair foundation. If the overpayment on the return or the payment made with the filing of the return is not sufficient to cover the amount designated to the state fair foundation checkoff, the amount credited to the state fair foundation checkoff will be reduced accordingly. The designation to the state fair foundation checkoff is irrevocable.

A designation to the state fair foundation checkoff may be allowed only after obligations of the taxpayer to the department of revenue, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, other state agencies, the Iowa election campaign checkoff, the Iowa fish and game protection fund checkoff and the domestic abuse services checkoff are satisfied.

On or before January 31 of the year following the year in which returns with the state fair foundation checkoff are due, the department of revenue shall transfer the total amount designated to the state fair foundation to the state fair foundation fund.

43.4(5) *Limitation of checkoffs on the individual income tax return.* For tax years beginning on or after January 1, 1995, but before January 1, 2004, no more than three checkoffs are allowed on the individual income tax return. The election campaign fund checkoff is not considered for purposes of limiting the number of checkoffs on the income tax return. When the same three checkoffs have been provided on the income tax return for three consecutive years, the checkoff for which the least amount has been contributed in the aggregate for the first two years and through March 15 of the third tax year will be repealed.

For example, the 1999 Iowa individual income tax return due in 2000 includes checkoffs A, B and C which also were shown on the Iowa returns for 1997, 1998 and 1999. Through March 15, 2000, $90,000 was contributed on the 1997, 1998 and 1999 returns for checkoff A, $60,000 was contributed for checkoff B and $120,000 for checkoff C. Since the least amount contributed in the aggregate was for checkoff B, that checkoff is repealed and will not appear on the 2000 Iowa income tax return to be filed in 2001.

For tax years beginning on or after January 1, 2004, no more than four checkoffs are allowed on the individual income tax return. The election campaign fund checkoff is not considered for purposes of limiting the number of checkoffs on the income tax return. When the same four checkoffs have been provided on the income tax return for two consecutive years, the two checkoffs for which the least amount

has been contributed in the aggregate for the first year and through March 15 of the second tax year will be repealed.

If more checkoffs are enacted in the same session of the general assembly than there is space for inclusion on the individual income tax return form, the earliest enacted checkoffs for which there is space will be included on the income tax return form, and all other checkoffs enacted during that session of the general assembly are repealed. If the same session of the general assembly enacts more checkoffs on the same day than there is space for inclusion on the individual income tax form, the director of revenue shall determine which checkoffs shall be included on the individual income tax form.

43.4(6) *Keep Iowa beautiful fund checkoff.* For tax years beginning on or after January 1, 2001, but before January 1, 2006, a taxpayer filing an individual income tax return can designate a checkoff of $1 or more to the keep Iowa beautiful fund. If the refund due on the return or the payment remitted with the return is insufficient to pay the additional amount designated by the taxpayer to the keep Iowa beautiful fund, the amount credited to the keep Iowa beautiful fund will be reduced accordingly. Once the taxpayer has designated a contribution to the keep Iowa beautiful fund on an individual income tax return filed with the department of revenue, the taxpayer cannot amend the designation.

A designation to the keep Iowa beautiful checkoff may be allowed only after obligations of the taxpayer to the department of revenue, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, other state agencies, the Iowa election campaign checkoff, the Iowa fish and game protection fund checkoff and the state fair foundation checkoff are satisfied.

On or before January 31 of the year following the year in which Iowa income tax returns with contributions to the keep Iowa beautiful fund are due, the department of revenue shall transfer the total amount designated to the keep Iowa beautiful fund.

43.4(7) *Volunteer fire fighter preparedness fund checkoff.* For tax years beginning on or after January 1, 2004, but before January 1, 2006, a taxpayer filing an individual income tax return can designate a checkoff of $1 or more to the volunteer fire fighter preparedness fund. If the refund due on the return or the payment remitted with the return is insufficient to pay the additional amount designated by the taxpayer to the volunteer fire fighter preparedness fund, the amount credited to the volunteer fire fighter preparedness fund will be reduced accordingly. Once the taxpayer has designated a contribution to the volunteer fire fighter preparedness fund on an individual income tax return filed with the department of revenue, the taxpayer cannot amend that designation.

A designation to the volunteer fire fighter preparedness fund checkoff may be allowed only after obligations of the taxpayer to the department of revenue, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, other state agencies, the Iowa election campaign checkoff, the Iowa fish and game protection fund checkoff, the state fair foundation checkoff and the keep Iowa beautiful fund checkoff are satisfied.

On or before January 31 of the year following the year in which Iowa income tax returns with contributions to the volunteer fire fighter preparedness fund are due, the department of revenue is to certify to the state treasurer the amount designated to the volunteer fire fighter preparedness fund on those returns.

43.4(8) *Veterans trust fund checkoff.* For tax years beginning on or after January 1, 2006, but before January 1, 2008, a taxpayer filing an individual income tax return can designate a checkoff of $1 or more to the veterans trust fund. If the refund due on the return or the payment remitted with the return is insufficient to pay the additional amount designated by the taxpayer to the veterans trust fund, the amount credited to the veterans trust fund will be reduced accordingly. Once the taxpayer has designated a contribution to the veterans trust fund on an individual income tax return filed with the department of revenue, the taxpayer cannot amend that designation.

A designation to the veterans trust fund checkoff may be allowed only after obligations of the taxpayer to the department of revenue, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid

commission, the office of investigations of the department of human services, the district courts, other state agencies, the Iowa election campaign checkoff, the Iowa fish and game protection fund checkoff and the state fair foundation checkoff are satisfied.

On or before January 31 of the year following the year in which Iowa income tax returns with contributions to the veterans trust fund are due, the department of revenue shall transfer the total amount designated to the veterans trust fund.

43.4(9) *Joint keep Iowa beautiful fund and volunteer fire fighter preparedness fund checkoff.* For tax years beginning on or after January 1, 2006, but before January 1, 2008, a taxpayer filing an individual income tax return can designate a checkoff of $1 or more to the joint keep Iowa beautiful fund and volunteer fire fighter preparedness fund. If the refund due on the return or the payment remitted with the return is insufficient to pay the additional amount designated by the taxpayer to the joint keep Iowa beautiful fund and volunteer fire fighter preparedness fund, the amount credited to the joint keep Iowa beautiful fund and volunteer fire fighter preparedness fund will be reduced accordingly. Once the taxpayer has designated a contribution to the joint keep Iowa beautiful fund and volunteer fire fighter preparedness fund on an individual income tax return filed with the department of revenue, the taxpayer cannot amend that designation.

A designation to the joint keep Iowa beautiful fund and volunteer fire fighter preparedness fund checkoff may be allowed only after obligations of the taxpayer to the department of revenue, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, other state agencies, the Iowa election campaign checkoff, the Iowa fish and game protection fund checkoff, the state fair foundation checkoff and the veterans trust fund checkoff are satisfied.

On or before January 31 of the year following the year in which Iowa income tax returns with contributions to the joint keep Iowa beautiful fund and volunteer fire fighter preparedness fund are due, the department of revenue shall transfer one-half of the total amount designated to the keep Iowa beautiful fund, and the remaining one-half will be transferred to the volunteer fire fighter preparedness fund.

43.4(10) *Child abuse prevention program fund checkoff.* For tax years beginning on or after January 1, 2008, a taxpayer filing an individual income tax return can designate a checkoff of $1 or more to the child abuse prevention program fund. If the refund due on the return or the payment remitted with the return is insufficient to pay the additional amount designated by the taxpayer to the child abuse prevention program fund, the amount credited to the child abuse prevention program fund will be reduced accordingly. Once the taxpayer has designated a contribution to the child abuse prevention program fund on an individual income tax return filed with the department of revenue, the taxpayer cannot amend that designation.

A designation to the child abuse prevention program fund checkoff may be allowed only after obligations of the taxpayer to the department of revenue, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, other state agencies, the Iowa election campaign checkoff, the Iowa fish and game protection fund checkoff and the state fair foundation checkoff are satisfied.

On or before January 31 of the year following the year in which Iowa income tax returns with contributions to the child abuse prevention program fund are due, the department of revenue shall transfer the total amount designated to the child abuse prevention program fund.

43.4(11) *Joint veterans trust fund and volunteer fire fighter preparedness fund checkoff.* For tax years beginning on or after January 1, 2008, a taxpayer filing an individual income tax return can designate a checkoff of $1 or more to the joint veterans trust fund and volunteer fire fighter preparedness fund. If the refund due on the return or the payment remitted with the return is insufficient to pay the additional amount designated by the taxpayer to the joint veterans trust fund and volunteer fire fighter preparedness fund, the amount credited to the joint veterans trust fund and volunteer fire fighter preparedness fund will be reduced accordingly. Once the taxpayer has designated a contribution to the

joint veterans trust fund and volunteer fire fighter preparedness fund on an individual income tax return filed with the department of revenue, the taxpayer cannot amend that designation.

A designation to the joint veterans trust fund and volunteer fire fighter preparedness fund checkoff may be allowed only after obligations of the taxpayer to the department of revenue, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, other state agencies, the Iowa election campaign checkoff, the Iowa fish and game protection fund checkoff, the state fair foundation checkoff and the child abuse prevention program fund checkoff are satisfied.

On or before January 31 of the year following the year in which Iowa income tax returns with contributions to the joint veterans trust fund and volunteer fire fighter preparedness fund are due, the department of revenue shall transfer one-half of the total amount designated to the veterans trust fund, and the remaining one-half will be transferred to the volunteer fire fighter preparedness fund.

This rule is intended to implement Iowa Code sections 422.12D, 422.12E, and 422.12H and 2008 Iowa Acts, Senate File 2124, division II.

701—43.5(422) Abatement of tax. For notices of assessment issued on or after January 1, 1995, if the statutory period for appeal has expired, the director may abate any portion of unpaid tax, penalties or interest which the director determines to be erroneous, illegal, or excessive. See rule 701—7.31(421) for procedures on requesting abatement of tax.

This rule is intended to implement Iowa Code section 421.60.

701—43.6(422) 1978 Income tax rebate. Rescinded IAB 11/24/04, effective 12/29/04.

701—43.7(422) Special refund for taxpayers with net long-term capital gains in the tax year. Rescinded IAB 11/24/04, effective 12/29/04.

701—43.8(422) Livestock production credit refunds for corporate taxpayers and individual taxpayers. For tax years beginning on or after January 1, 1996, corporate and individual taxpayers who own certain livestock, have livestock production operations in Iowa in the tax year, and who meet certain qualifications are eligible for a livestock production credit refund. The amount of a livestock production credit refund is determined by adding together for each head of livestock in the taxpayer's operation the product of 10 cents for each corn equivalent deemed to have been consumed by that animal in the taxpayer's operation in the tax year. However, for tax years beginning in the 1996 and the 1997 calendar years, only qualified taxpayers that have cow-calf livestock production operations described in paragraph *"i"* of subrule 43.8(2) will be eligible for the livestock production credit refunds and for tax years beginning on or after January 1, 1998, only qualified taxpayers that have cow-calf livestock operations described in paragraph *"o"* of subrule 43.8(2) will be eligible for the livestock production refunds, notwithstanding the other types of livestock operations mentioned in this rule. Note that the livestock production credit refund is also available to taxpayers who meet the qualifications described in subrule 43.8(1) and operate certain types of poultry operations in this state and own the poultry in the operations. The amounts of the livestock production credit refunds for these taxpayers are determined on the basis of 10 cents for each corn equivalent deemed to have been consumed by the chickens or the turkeys in the taxpayers' poultry operations in the tax year. However, the amount of livestock production credit refund may not exceed $3,000 per livestock or poultry operation for a tax year. In addition, the amount of livestock production credit refund per taxpayer for a tax year may not exceed $3,000. Therefore, if a particular taxpayer is involved in a cow-calf beef operation, a sheep-ewe flock operation, and a farrow-to-finish hog operation, the maximum livestock production credit refund for this taxpayer may not exceed $3,000.

General references in this rule to livestock, livestock production, and livestock production operations also apply to poultry, poultry production, and poultry production operations.

In the case of married taxpayers, each of the spouses may be eligible for a livestock production refund of up to $3,000 if each of the spouses was involved in a livestock production operation independently from the other spouse and independently from other taxpayers in the tax year. If both spouses are involved in the same livestock operation, the maximum refund from that operation is $3,000 which may be allocated between the individuals in the ratio of each spouse's ownership interest in the operation. If a livestock production operation is conducted by a partnership, limited liability company, subchapter S corporation, estate, or a trust, the livestock production credit refund from the entity is to be allocated to the owners of the entity in the same ratio as earnings are allocated to the owners. In situations where a livestock production operation is conducted partly within and partly without Iowa, only the livestock production activity in Iowa during the tax year will be considered for purposes of the livestock credit refund. The livestock production refund amounts for these taxpayers is to be allocated on the basis of sales of Iowa livestock which qualify taxpayers for the livestock production refund to total sales of livestock which qualify taxpayers for the refund. However, the refunds from any operations may not exceed $3,000. The following subrules outline how the livestock production credit refund program is to be administered by the department of revenue:

43.8(1) *Qualifications for the livestock production credit refunds.* Taxpayers that own livestock located in Iowa in a tax year must meet the qualifications in paragraphs *"a"* and *"b"* in order to be eligible for the livestock production credit refunds for tax years beginning in the 1996 calendar year. Taxpayers that own livestock located in Iowa in tax years beginning on or after January 1, 1997, must meet the qualification in paragraph *"c"* for a tax year in order to be eligible for the livestock product refund for that tax year:

a. The taxpayer's net worth at the end of the tax year for the refund must be less than $1 million. A taxpayer filing a claim for the livestock production credit refund is to complete a balance sheet to establish the taxpayer's net worth on the last day of the tax year for which the refund is claimed. The balance sheet is to be completed on the basis of the accounting method used by the taxpayer for federal and Iowa income tax purposes. The taxpayer does not have to file the balance sheet with the taxpayer's return as part of the taxpayer's claim for the livestock production credit refund. However, the balance sheet must be retained with the taxpayer's other tax records for a minimum of three years after the return was filed so the balance sheet is available for audit by the department of revenue. The balance sheet must include all assets owned by the taxpayer and must show the fair market value of those assets as well as the liabilities or debts that are attributable to that taxpayer. In the case of married taxpayers where only one of the spouses is materially participating in the livestock operation, only the fair market values of the assets owned by that individual are to be entered on the balance sheet, including half of the value of farmland owned by the spouses, other real estate, and items of personal property which are owned together by both taxpayers. In these situations, the taxpayer must list as liabilities on the balance sheet only those debts for which the taxpayer is personally liable. In the case of liabilities for property that is jointly owned by the taxpayer and the taxpayer's spouse, including property owned as tenants in common, only the debt on these properties that is the taxpayer's share of the debt is to be shown on the balance sheet.

b. More than one-half of the taxpayer's gross income received or accrued in the tax year must be from farming or ranching activities. A taxpayer's gross income from farming or ranching includes amounts the individual has received in the tax year from cultivating the soil or raising or harvesting any agricultural commodities. This includes, but is not limited to, income from the operation of a stock, dairy, poultry, fish, bee, fruit, or truck farm, plantation, ranch, nursery, range, orchard, or oyster bed, as well as income in the form of crop shares received from the use of the taxpayer's land. It also includes total gains from sales of draft, breeding, dairy, or sporting livestock. In the case of individual income tax returns for the 1995 tax year, gross income from farming or ranching includes the total of the amounts from line 11 or line 51 of Schedule F and line 7 of Form 4835 ("Farm Rental Income and Expenses"), plus the share of partnership income from farming, the share of net taxable income from farming in an estate or trust, and total gains from the sale of livestock held for draft, breeding, sport, or dairy purposes, as shown on Form 4797 ("Sale of Business Property"). In the case of individual returns for tax years

beginning in 1996 and thereafter, equivalent lines from returns and supplementary forms would be used to determine a taxpayer's gross income from farming or ranching for those years.

To make a calculation as to whether more than half of the taxpayer's gross income in the tax year is from farming or ranching operations, the gross income from farming or ranching as determined in the previous paragraph is divided by the taxpayer's total gross income. If the resulting percentage is greater than 50 percent, the taxpayer will be eligible for the livestock production credit refund (assuming all other qualifications are met).

For example, a taxpayer had $25,000 in wages, $75,000 in gross income from farming, and $10,000 in net income from farming. In this case 75 percent of the taxpayer's gross income was from farming even though the taxpayer had only $10,000 in net income from farming activities.

In the case of married individuals, the taxpayer's gross income includes the income of the other spouse only if that spouse is materially participating in the livestock or poultry operation. If the other spouse is not materially participating in the livestock operation, the taxpayer's gross income from farming would be determined as if the taxpayer was filing a separate Iowa return so that the taxpayer's income and deductions are reported separately from the income and deductions of the taxpayer's spouse.

For example, a taxpayer's gross income from a cow-calf beef production operation was $100,000 and the taxpayer's spouse had $60,000 in gross income which was wages from employment. Since the taxpayer's spouse had no material participation in the taxpayer's cow-calf beef production operation, the spouse's income was not considered for purposes of determining if more than 50 percent of the taxpayer's gross income was from farming or ranching.

Taxpayers do not have to submit (with their claims for the livestock production credit refunds) proof that more than half of the taxpayer's gross income is from farming or ranching. However, they should be able to provide such proof if such proof is requested by the department.

c. Individual and corporate taxpayers will be eligible for the livestock production credit refund if the taxpayer's federal taxable income for tax years beginning in the 1997 calendar year is $99,600 or less. In the case of married taxpayers, their combined federal taxable income must be considered to determine if they are eligible for the credit.

For each tax year beginning after 1997, the federal taxable income specified previously in this paragraph is to be multiplied by the "cumulative index factor" for that tax year to calculate the federal taxable income that will be used to determine whether a taxpayer is eligible for the livestock production refund that is authorized for that tax year. "Cumulative index factor" means the product of the annual index factor for the 1997 calendar year and all annual index factors for subsequent calendar years. The annual index factor equals the annual inflation factor for that calendar year as computed in Iowa Code section 422.4 for purposes of indexation of the tax rates for individual income tax.

43.8(2) *Definitions related to the livestock production credit refunds.* The following definitions explain livestock and poultry for purposes of this rule. The definitions also describe the various types of livestock operations of taxpayers which may qualify the taxpayers for the livestock production credit refunds and specify how the refunds are to be computed for the various types of livestock operations:

a. For the purposes of this rule, the term "livestock" means domestic bovine animals which will be referred to as bulls, heifers, cattle, calves, or cows in this rule, domestic ovine animals which will be referred to as sheep, lambs, rams, or ewes, or domestic swine which will be referred to as hogs or pigs. That is, for purposes of this rule, "livestock" includes only those farm animals which may qualify their owners for the livestock production credit refund. "Livestock" does not include horses, goats, donkeys, mules, oxen, furbearing mammals, other mammals, or other classes of animals, although some of these animals or species may be considered to be "livestock" in other contexts or situations.

b. For purposes of this rule the term "poultry" means only domestic chickens and domestic turkeys as only these types of birds may qualify their owners for the livestock production credit refunds. "Poultry" does not include ducks, geese, wild turkeys, emus, ostriches, or other fowl or birds, although some of these species may be considered to be poultry in other contexts or situations.

c. For purposes of this rule, the term "farrow-to-finish" hog operations comprises those hog production operations where the majority of the hogs sold from the operation are from animals farrowed and raised in the operation which are sold at a prime market weight of 200 pounds or more.

In order to compute the livestock production credit refund amounts for the "farrow-to-finish" hog production operations, the corn equivalent factor of 13 per animal sold, or $1.30, is multiplied by the number of hogs sold at prime market weight in the tax year which were farrowed and raised in the operation. No corn equivalent credits are given for hogs sold at the prime market weight which have been in the operation less than three months on the date of sale. In the "farrow-to-finish" operations, hogs sold at a weight that is less than the prime market weight also are considered for purposes of computing the livestock production credit refund for the operation, but only at the corn equivalent factor of 2.6 or $.26 per pig sold.

In "farrow-to-finish" hog operations, if any pigs are purchased at the feeder pig weight of less than 60 pounds and are sold at prime market weight (200 pounds or more), see paragraph *"e"* in this subrule for the corn equivalent factor which applies to these transactions.

d. For purposes of this rule, the term "farrow-to-feeder-pig" hog operations includes those operations where essentially all the pigs farrowed in the operation are sold at an average weight of less than 60 pounds per pig, or at "feeder pig" weight.

The potential livestock production credit refunds for these operations are computed by multiplying the corn equivalent factor of 2.6 or $.26 times the number of pigs sold at the "feeder pig" weight from these operations in the tax year. However, the corn equivalent factor of 13 or $1.30 per animal sold can be used for hogs sold at the prime market weight (200 pounds or more) from these operations for those animals where there is documentation that the hogs were born and raised in the operation or that the hogs were in the operation for a minimum of three months at the time the hogs were sold.

e. The term "finishing feeder pigs" hog operations comprises those operations where the majority of the hogs in this operation are purchased when these animals weighed less than 60 pounds or at the "feeder pig" weight and the animals are sold at the time the animals are at the prime market weight of 200 pounds or more per hog. The potential livestock production credit refunds for these operations are computed by multiplying the corn equivalent factor of 10.4 or $1.04 times the number of animals sold in the year at the prime market weight. However, only those animals that were in the operation for a minimum of three months at the time the hogs were sold at prime market weight can be considered for purposes of the livestock production credit refund. Corn equivalent factor credits of 2.6 or $.26 are given for animals which are purchased at the "feeder pig" weight of less than 60 pounds and were in the operation for a minimum of three months when the hogs were sold at a weight which is less than the prime market weight of 200 pounds or more per hog.

f. For purposes of this rule, the term "layer poultry operations" includes operations where the eggs produced by the chickens in the operation are sold for human consumption. The livestock production credit refunds for these operations are computed on the basis of the average number of chickens in the operation in the tax year multiplied by the corn equivalent factor of .88 or $.088. The average number of chickens in the operation in the tax year is the aggregate of the number of chickens in the operation on the first day in the tax year that the operation was in production and the number of chickens in the operation on the last day of the tax year in which the operation was in production divided by 2.

However, in a situation where the operation was started or was shut down sometime during the tax year, the livestock refund amount otherwise computed must be reduced by 8.33 percent for each month in the tax year in which the operation was not in production. Thus, in the case where the computed livestock refund amount was $2,000 and the operation was in production for only nine months of the tax year, the adjusted refund amount would be $1,500 ($2,000 x .0833 x (3) = $500). ($2,000 - 500 = $1,500)

g. For purposes of this rule, the term "turkey production operations" means operations involved in raising domestic turkeys for sale for human consumption and where the turkeys are sold at a prime market weight. The prime market weight for male or tom turkeys is between 30 and 35 pounds. The prime market weight for hen turkeys is between 22 and 25 pounds. The livestock production credit refund for this type of operation is computed by multiplying the number of turkeys sold in the tax year at the prime market weight times the corn equivalent factor of 1.5 or $.15. However, only those turkeys that were in the operation for a minimum of three months on the date the turkeys were sold may be considered for purposes of computing the livestock production credit for the turkey operation.

h. For purposes of this rule, the term "broiler poultry operations" means poultry production operations whereby the chickens raised in the operations are sold for human consumption at a prime market weight or broiler weight between 3 pounds and 6 pounds depending on the breed or breeds of chickens. The livestock production credit refund for this type of operation is computed by multiplying the number of chickens sold in the tax year at broiler weight by the corn equivalent factor of .15 or $.015. However, only chickens that are in the broiler operation for a minimum of six weeks before the chickens are sold at broiler weight may be considered for purposes of computing the livestock production credit for these operations.

i. For purposes of this rule and only for tax years beginning in the 1996 and 1997 calendar years, "cow-calf beef operations" means those beef cattle production operations whereby the majority of the cattle in the operations were born and raised in the operations and many of the cattle in the operations were sold at a prime market weight of 700 pounds or more.

The livestock production credit refunds for cow-calf operations include the number of cattle raised in the operation, which are sold in the tax year at the stocker weight under the criteria described in paragraph *"j"* of this subrule and which are sold in the tax year at the feedlot weight under the criteria described in paragraph *"k"* of this subrule. However, those cattle in the operation that were sold at the feedlot weight in the tax year qualify for a combined stocker and feedlot production credit refund of $11.65 per head of cattle sold, to the extent the cattle sold had been in the operation at least 300 days after the cattle were weaned. Cattle in the operation that were sold at a weight below 700 pounds may not be counted for purposes of computing the livestock production credit refund for the operation. However, unbred replacement heifers in inventory on December 31 of the tax year would qualify for a production credit refund of $4.15 per head if these cattle had been born, raised and weaned in the operation and had been in the herd for at least two months after weaning on December 31.

Finally, the livestock production credit refunds for cow-calf operations include refund amounts determined on the number of bred cows, bred yearling heifers, and breeding bulls in inventory on December 31 of the tax year times the corn equivalent factor of 111.5 or $11.15. However, any bred cows, bred yearling heifers, and breeding bulls in inventory on December 31 which were not in the operation on July 1 of that calendar year may not be considered for purposes of computation of the livestock production credit refund.

j. For purposes of this rule, "stocker cattle operations" are beef cattle operations where essentially all cattle in the operations are purchased as calves, raised in the operation at least two months, and the cattle are sold in a range from 700 to 900 pounds per head which is deemed to be the "stocker weight." Cattle in the operation that were sold at a weight of less than 700 pounds may not be counted for purposes of computing the livestock production credit refund for the operation. The livestock production credit refunds for these operations is computed on the basis of the number of cattle sold in the year at the stocker weight times the corn equivalent factor of 41.5 or $4.15 per head. Cattle sold in the tax year must be reported on a first-in, first-out basis unless records of the taxpayer can support a different order of sale of the animals. If this operation includes calves that were raised on the farm where they were born, these calves qualify for the corn equivalent factor of 41.5 or $4.15 per head if the calves were unsold at the end of the tax year and the calves were in the operation for a minimum of two months after the calves were weaned.

k. For purposes of this rule, "beef feedlot operations" include those beef cattle operations whereby the cattle are purchased as calves approximately 60 days from the time the calves were weaned or at a "stocker weight" and are sold at a feedlot weight of 900 pounds or more after a three-month period when the animals were on a high concentrate diet. Note that any animals which are purchased for the operation and are maintained in the herd for less than four months at the time of sale do not qualify the taxpayer for the livestock production credit refund of $7.50 per head of cattle sold. The livestock production credit refund for these operations is computed by multiplying the number of cattle sold in the year at the feedlot weight times the corn equivalent amount of 75 or $7.50 per animal. However, if any cattle in the operation are sold at the "stocker" weight of at least 700 pounds but less than 900 pounds, these animals may be counted for the livestock production credit refund at a corn equivalent amount of 41.5 or $4.15 per head of cattle sold to the extent the cattle were in the operation for two months or more at the time

of sale. If any cattle in the operation in the tax year were sold at a weight of less than 700 pounds, the sales of these cattle may not be counted for the livestock production credit refund. Cattle sold in the tax year must be reported on a first-in, first-out basis unless records of the taxpayer can support a different order of sale of the cattle.

l. For purposes of this rule, "dairy cattle operations" includes those cattle operations where the primary purpose of the operations is the production of milk and milk products for human consumption. The livestock production credit refund is computed by multiplying the aggregate of the number of milking cows in lactation on December 31 of the tax year and the number of cows bred to calve within 60 days of December 31 and the number of breeding bulls in inventory on December 31 times the corn equivalent number of 350 or $35 per cow. However, cattle that were purchased in the period between July 1 and December 31 of the calendar year may not be considered for purposes of computation of the livestock production credit for the dairy operation. In the case of a "dairy cattle operation" which started or ceased production in the tax year, the livestock production credit refund otherwise computed must be reduced by 8.33 percent for each month in the tax year in which the livestock operation was not in production. Heifers in the operation are not counted for purposes of the credit until the animals are bred to calve.

m. For purposes of this rule, "ewe flock sheep operations" are sheep operations whereby the majority of the sheep and lambs sold from the operation were born and raised in the operation. The livestock production credit refunds for these operations are computed by multiplying the number of ewes and rams in inventory on December 31 of the tax year times the corn equivalent factor of 20.5 or $2.05 per ewe or ram. Any ewes or rams purchased within three months before December 31 of the tax year may not be considered for purposes of computing the livestock production credit for the operation. In addition, lambs sold in the tax year from the operation may be counted for the production credit refund at 4.1 corn equivalents or $.41 for each lamb sold to the extent the lambs were in the operation for a minimum of three months prior to the date of sale.

n. For purposes of this rule, "sheep feedlot operations" are sheep production operations where lambs born and raised in the operation are sold after the lambs have been in the operation for a minimum of three months prior to the date of sale. The livestock production credit refunds are computed by multiplying the number of lambs sold in the tax year times the corn equivalent factor of 4.1 or $.41.

o. For the purposes of this rule and for tax years beginning on or after January 1, 1998, "cow-calf operations" means those livestock cattle production operations that include bred cows, bred heifers, and breeding bulls. The livestock production credit refunds for cow-calf operations are determined only on the number of bred cows, bred heifers, and breeding bulls in inventory of the operations on December 31 of the tax year times the corn equivalent factor of 111.5 or $11.15. However, only those bred cows, bred heifers, and breeding bulls in inventory on December 31 which were also in inventory on July 1 of the same calendar year may be counted for purposes of computing the livestock production refunds.

43.8(3) *Filing claims for the livestock production credit refunds.* Taxpayers who are eligible for the livestock production credit refunds must file refund requests on claim forms provided by the department that must be attached to their income tax returns for the tax year in which the livestock production occurred. The claim forms must be filed with the income tax returns within ten months after the end of the tax year of the return in order for the refund claims to be timely. Thus, in the case of a taxpayer filing a livestock production refund claim form with the 1996 Iowa income tax return for calendar year 1996, the claim forms must be filed by October 31, 1997, in order for the claims to be timely. Taxpayers may not request extensions for filing claims for the livestock production refunds.

The department will determine by February 28 of the year after the year in which the livestock production credit refund claims are to be filed if the total amount requested on the refund claims exceeds the amount appropriated for the refunds for that tax year. If a taxpayer's refund claim is not payable on February 28 because the taxpayer is a fiscal year filer, that taxpayer's claim will be considered to be a claim for the following tax year. However, in order for this claim to be considered to be a valid refund claim for the following tax year, the refund claim must have been filed within ten months after the end of the fiscal year of the taxpayer. However, in the case of livestock production credit refund claims for fiscal year periods beginning in 1996 which are not received soon enough to be considered for the refunds to

be issued in February 1998, only claims for cow-calf livestock production operations will be considered with the livestock production refund claims for the 1997 tax year.

If a taxpayer files a fraudulent claim for a livestock production credit refund for a tax year, the taxpayer will be considered to have forfeited any right or interest to a livestock production refund for any subsequent tax year after the year of the fraudulent claim.

43.8(4) *Records needed to establish livestock production credit refunds.* The burden is on the taxpayer to maintain those records and documents which support the livestock production credit refund that was claimed by the taxpayer. Necessary records and documents must include, but are not limited to, the ones mentioned in this subrule. Some of the necessary records are inventory schedules showing the number of livestock or poultry in the livestock operation on certain dates in the tax year. Sales of livestock or poultry in the tax year must be supported by scale tickets, packing house invoices, sales receipts, sales barn invoices, and similar documents. Dairy herd improvement association records and similar inventory forms can be used to establish the number of animals or the number of birds on hand in the operation on a certain day in the tax year. These documents are not to be submitted with the taxpayer's income tax return with the livestock production credit refund claim form. Instead, the documents are to be retained with other tax records for at least three years in case of possible audit by the department of revenue.

This rule is intended to implement Iowa Code sections 422.120, 422.121, and 422.122.

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◊ Two or more ARCs

CHAPTER 44
PENALTY AND INTEREST
[Prior to 12/17/86, Revenue Department[730]]

701—44.1(422) Penalty. See rule 701—10.6(421) for penalty for tax periods beginning on or after January 1, 1991. See rule 701—10.8(421) for statutory exemptions to penalty for tax periods beginning on or after January 1, 1991.

This rule is intended to implement Iowa Code sections 421.27 and 422.25.

701—44.2(422) Computation of interest on unpaid tax. Interest shall accrue on tax due from the original due date of the return. Interest on refunds of any portion of the tax imposed by statute which has been erroneously refunded and which is recoverable by the department shall bear interest as provided by law from the date of payment of the refund, with each fraction of a month considered to be an entire month. See rule 701—10.2(421) for the statutory interest rate.

All payments shall be first applied to the penalty and then to the interest, and the balance, if any, to the amount of tax due.

This rule is intended to implement Iowa Code sections 421.7 and 422.25.

701—44.3(422) Computation of interest on refunds resulting from net operating losses. If the amount of tax is reduced as a result of a net operating loss or net capital loss, interest shall accrue on the refund resulting from the loss carryback beginning on the date a claim for refund or amended return carrying back the net operating loss or net capital loss is filed with the department or on the first day of the second calendar month following the date of the actual payment, whichever is later.

This rule is intended to implement Iowa Code section 422.25.

701—44.4(422) Computation of interest on overpayments. If the amount of tax determined to be due by the department is less than the amount paid, the excess to be refunded will accrue interest from the first day of the second calendar month following the date of payment or the date the return was due to be filed or was filed, whichever is the later.

This rule is intended to implement Iowa Code section 422.25.

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CHAPTER 45
PARTNERSHIPS
[Prior to 12/17/86, Revenue Department [730]]

701—45.1(422) General rule. An Iowa partnership, limited partnership, or limited liability company required to file a return under the provisions of Iowa Code subsection 422.15(2) shall be a partnership, limited partnership, or limited liability company required to file a partnership return for purposes of federal income tax. A partnership or limited liability company engaged in carrying on business in this state is an Iowa partnership or an Iowa limited liability company. Iowa follows the Treasury check-the-box regulation, 301.7701-3, for determination of the tax status of partnerships or limited liability companies including single-member limited liability companies.

This rule is intended to implement Iowa Code section 422.15.

701—45.2(422) Partnership returns. Every partnership deriving income (1) from property owned within this state or (2) from a business, trade, profession or occupation carried on within the state must make a return of income regardless of the amount of income or loss and regardless of the residence of the partners. The return shall be made on the proper form and signed by one of the partners. The return shall be made on the same period basis, calendar or fiscal, as the partnership accounts are kept, irrespective of the fact the partners are reporting their incomes on a different period basis. The return shall be filed with the department on or before the last day of the fourth month after the expiration of the tax year.

This rule is intended to implement Iowa Code section 422.21.

701—45.3(422) Contents of partnership return. The return of a resident partnership or of a partnership with one or more nonresident members, but whose income is derived entirely or partially from sources within this state, shall state specifically (1) the net income, and the capital gains or losses reported on the federal partnership return, (2) the names and addresses of the partners, and (3) their respective shares in said amounts.

This rule is intended to implement Iowa Code section 422.15.

701—45.4(422) Distribution and taxation of partnership income. A partnership as such is not taxable but the members of a partnership (including limited partnerships organized under Iowa Code chapter 488) are taxable (except as otherwise provided in 701—subrule 40.16(5) respecting nonresident members) upon their distributable shares of the net income of the partnership whether distributed to the partners or not. If the result of the partnership operation is a net loss (i.e., excess of allowable deductions from gross income) the loss may be deducted by the partners (except as otherwise provided respecting nonresident members) in the same proportion that net income would have been taxable to the partners. If the partner reports income on the same taxable year basis as that of the partnership, the distributable share of the net income (or loss) of the partnership for the taxable year must be included in or deducted from gross income on the individual return for that year. If, however, the taxable year of the partner is different from that of the partnership, distributable shares must be included in or the proportion of the loss deducted from gross income for the year in which the taxable year of the partnership ends.

Residents of Iowa must report in total their distributable share of partnership income or loss on their Iowa income tax return. Nonresidents must report, for income tax purposes, their share of distributable partnership income or loss as determined under 701—subrule 40.16(6).

This rule is intended to implement Iowa Code sections 422.7 and 422.15.

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CHAPTER 46
WITHHOLDING
[Prior to 12/17/86, Revenue Department[730]]

701—46.1(422) Who must withhold.

46.1(1) *Requirement of withholding.*

a. General rule. Every employer maintaining an office or transacting business within this state and required under provisions of Sections 3401 to 3404 of the Internal Revenue Code to withhold and pay federal income tax on compensation paid for services performed in this state to an individual is required to deduct and withhold from such compensation for each payroll period (as defined in Section 3401(b) of the Internal Revenue Code) an amount computed in accordance with subrules 46.2(1) and 46.2(2). Iowa income tax is not required to be withheld on any compensation paid in this state of a character which is not subject to federal income tax withholding (whether or not such compensation is subject to withholding for federal taxes other than income tax, e.g., FICA taxes), except as provided in rule 46.4(422).

b. Examples. Paragraph *"a"* above may be illustrated by the following examples:

(1) Temporary help. A is a typist in the offices of B corporation, where she has worked regularly for two months. A is, however, supplied to B corporation by C, a temporary help agency located in Iowa. C renders a weekly bill to B corporation for A's services, and C then pays A. B corporation is not A's "employer" within Section 3401(d) of the Internal Revenue Code, and B corporation is therefore not required by the Internal Revenue Code to withhold a tax on A's compensation. Since B corporation is not required to withhold a tax for federal purposes on A's compensation, B is not required to do so for Iowa purposes. C, the temporary help agency, however, is required to withhold from A's compensation for federal purposes and must also do so for Iowa purposes.

(2) Domestic help. A is employed as a cook by Mr. and Mrs. B. The B's are required to withhold FICA (i.e., Social Security) tax from compensation paid to A, but are not required to withhold income tax from such compensation under the Internal Revenue Code, because under Section 3401(a)(3), A's compensation does not constitute "wages". Since the B's are not required to withhold income tax for federal purposes, they are not required to do so for Iowa purposes.

(3) Executives. A is a corporate executive. On January 1, 1998, A entered into an agreement with B corporation under which he was to be employed by B in an executive capacity for a period of five years. Under the contract, A is entitled to a stated annual salary and to additional compensation of $10,000 for each year. The additional compensation is to be credited to a bookkeeping reserve account and deferred, accumulated and paid in annual installments of $5,000 on A's retirement beginning January 1, 2003. In the event of A's death prior to exhaustion of the account, the balance is to be paid to A's personal representative. A is not required to render any service to B after December 31, 2002. During 2003, A is paid $5,000 while a resident of Iowa. The $5,000 is not excluded from "wages" under Section 3401(a) of the Internal Revenue Code; therefore, B is required to withhold federal income tax, and, since it is compensation paid in this state, B must withhold Iowa income tax on A's deferred compensation.

(4) Agricultural labor. Wages paid for agricultural labor are subject to withholding for state income tax purposes to the same extent that the wages are subject to withholding for federal income tax purposes.

c. Exemption from withholding. An employer may be relieved of the responsibility to withhold Iowa income tax on an employee who does not anticipate an Iowa income tax liability for the current tax year.

An employee who anticipates no Iowa income tax liability for the current tax year shall file with the employer a withholding allowance certificate claiming exemption from withholding. An employee who meets this criterion may claim an exemption from withholding at any time; however, this exemption from withholding must be renewed by February 15 of each tax year that the criterion is met. If the employee wishes to discontinue or is required to revoke the exemption from withholding, the employee must file a new withholding allowance certificate within ten days from the date the employee anticipates a tax liability or on or before December 31 if a tax liability is anticipated for the next tax year. See subrule 46.3(2).

d. Withholding from lottery winnings. Every person, including employees and agents of the Iowa lottery authority, making any payment of "winnings subject to withholding" shall deduct and withhold a tax in an amount equal to 5 percent of the winnings. The tax shall be deducted and withheld upon payment of the winnings to a payee by the person or payer making this payment. Any person or payee receiving a payment of winnings subject to withholding must furnish the payer with a statement as is required under Treasury Regulation §31.3402(q)-1, paragraph "e," with the information required by that paragraph. Payers of winnings subject to withholding must file Form W-2G with the Internal Revenue Service, the department of revenue, and the payee of the lottery winnings by the dates specified in the Internal Revenue Code and in Iowa Code section 422.16. The W-2G form shall include the information described in Treasury Regulation §31.3402(q)-1, paragraph "f."

"Winnings subject to withholding" means any payment where the proceeds from a wager exceed $600. The rules for determining the amount of proceeds from a wager under Treasury Regulation Section 31.3402(q)-1, paragraph "c," shall apply when determining whether the proceeds from Iowa lottery winnings are great enough so that withholding is required. This rule shall apply to winnings from tickets purchased from the Powerball and Hot Lotto games or any other similar games to the extent the tickets were purchased within the state of Iowa.

e. Withholding from prizes from games of skill, games of chance, or raffles. Every person making any payment of a "prize subject to withholding" must deduct and withhold a tax in an amount equal to 5 percent of the prize from a game of skill, a game of chance, or a raffle. The tax must be deducted and withheld upon payment of the winnings to a payee by the person making this payment. Any person or payee receiving a payment of winnings subject to withholding must furnish the payer with a statement as is required under Treasury Regulation Section 31.3402(q)-1, paragraph "e," with the information required by that paragraph. Payers of prizes subject to withholding must file Form W-2G with the Internal Revenue Service, the department of revenue, and the payee of the prize by the dates specified in the Internal Revenue Code and in Iowa Code section 422.16. The W-2G form must include the information described in Treasury Regulation Section 31.3402(q)-1, paragraph "f."

"Prizes subject to withholding" means any payment of a prize where the amount won exceeds $600.

f. Withholding from winnings from pari-mutuel wagers. Every person making any payment of "winnings subject to withholding" must deduct and withhold a tax in an amount equal to 5 percent of the winnings from pari-mutuel wagers. The tax must be deducted and withheld upon payment of the winnings to a payee by the person making this payment. Any person or payee receiving a payment of winnings subject to withholding must furnish the payer with a statement as is required under Treasury Regulation Section 31.3402(q)-1, paragraph "e," with the information required by that paragraph. Payers of winnings subject to withholding must file Form W-2G with the Internal Revenue Service, the department of revenue, and the payee of the winnings by the dates specified in the Internal Revenue Code and in Iowa Code section 422.16. The W-2G form must include the information described in Treasury Regulation Section 31.3402(q)-1, paragraph "f."

"Winnings subject to withholding" are winnings in excess of $1,000.

g. Withholding from winnings from slot machines on riverboat gambling vessels and from winnings from slot machines at racetracks. Withholding of state income tax is required if the winnings from slot machines on riverboat gambling vessels or from slot machines at racetracks exceed $1,200.

46.1(2) *Withholding on pensions, annuities and other nonwage payments to Iowa residents.* State income tax is required to be withheld from payments of pensions, annuities, supplemental unemployment benefits and sick pay benefits and other nonwage income payments made to Iowa residents in those circumstances mentioned in the following paragraphs. This subrule covers those nonwage payments described in Sections 3402(o), 3402(p), 3402(s), 3405(a), 3405(b), and 3405(c) of the Internal Revenue Code. This includes, but is not limited to, payments from profit-sharing plans, stock bonus plans, deferred compensation plans, individual retirement accounts, lump-sum distributions from qualified retirement plans, other retirement plans, and annuities, endowments and life insurance contracts issued by life insurance companies. These payments are subject to Iowa withholding tax if they are also subject to federal withholding tax. However, no state income tax withholding is required from nonwage payments to residents to the extent those payments are not subject to state income tax. Generally, no state income

tax is required to be withheld from nonwage payments to residents in circumstances where the payment amounts are less than $250 or the taxable portions of the payments are less than $250 in situations where the payers know the taxable amounts. In instances where a payment amount or taxable amount is $250 or more but the payment amount or the taxable amount for the year is less than $3,000, no state income tax is required to be withheld. In the case of some nonwage payments to residents, such as payments of pensions and annuities, no state income tax is required to be withheld if no federal income tax is being withheld from the payments of the pensions and annuities. The rate of withholding on the nonwage payments described in this subrule is 5 percent of the payment amounts or 5 percent of the taxable amounts unless specified otherwise.

For purposes of this subrule, an individual receiving nonwage payments will be considered to be an Iowa resident and subject to this subrule if the individual's permanent residence is in Iowa. The fact that a nonwage payment is deposited in a recipient's account in a financial institution located outside Iowa does not mean that the recipient's permanent residence is established in the place where the financial institution is situated.

Payers of pension and annuity benefits and other nonwage payments have the option of either withholding Iowa income tax from these payments on the basis of tables and formulas included in the Iowa withholding tax guide of the department of revenue or withholding Iowa income tax from these payments at the rate of 5 percent. State income tax is required to be withheld by payers in situations when federal income tax is being withheld from the nonwage payments.

a. Withholding from pension and annuity payments to residents. Withholding of state income tax is required from payments of pensions and annuities to Iowa residents to the extent that the recipients of the payments have not filed with the payers of the benefits election forms which specify that no federal income tax is to be withheld. Therefore, state income tax is to be withheld when federal income tax is being withheld from the pensions or annuities. See paragraph *"h"* for threshold amounts for withholding from payments of pensions, annuities, and other retirement incomes which are made on or after January 1, 2001.

However, although Iowa income tax is ordinarily required to be withheld from pension and annuity payments made to Iowa residents if federal income tax is being withheld from the payments, no state income tax is required to be withheld if pension and annuity payments are not subject to Iowa income tax, as in the case of railroad retirement benefits which are exempt from Iowa income tax by a provision of federal law. In addition, no Iowa income tax is required from a pension or annuity payment made to an Iowa resident to the extent that the payment amounts are less than $250 or the taxable amounts of the payments are less than $250 in instances where the payers know the taxable amounts of the payments.

b. Withholding from payments to residents from profit-sharing plans, stock bonus plans, deferred compensation plans, individual retirement accounts and from annuities, endowments and life insurance contracts issued by life insurance companies. Payments to Iowa residents from profit-sharing plans, stock bonus plans, deferred compensation plans, individual retirement accounts and payments from life insurance companies for contracts for annuities, endowments or life insurance benefits are subject to withholding of state income tax if federal income tax is withheld from the benefits. However, no state income tax is to be withheld from the income tax payments described above to the extent those income tax payments are exempt from Iowa income tax. See paragraph *"h"* for thresholds for withholding from payments of pensions, annuities, individual retirement accounts, deferred compensation plans, and other retirement incomes which are made on or after January 1, 2001. In addition, no state income tax is to be withheld in circumstances where payment amounts are less than $250 or the taxable portions of the payments are less than $250 in cases when the payer knows the taxable amount of the payment. There is also no state income tax withholding in situations where the payment amount or the taxable amount is $250 or more but the payment amount or the taxable amount for the year is less than $3,000.

In cases where the recipients elect withholding of state income tax from the income payments, the payers are to withhold from the payments at a rate of 5 percent on the taxable portion of the payment, if that can be determined by the payer or on the entire income payment if the payer does not know how much of the payment is taxable. Once a recipient makes an election for state income tax withholding, that election will remain in effect until a later election is made.

c. Withholding from payments to residents for supplemental unemployment compensation benefits and sick pay benefits. Income payments made for supplemental unemployment compensation benefits described in Section 3402(o)(2)(a) of the Internal Revenue Code and for sick pay benefits are subject to withholding of state income tax. In the case of supplemental unemployment compensation benefits, those benefits are treated as wages for purposes of state income tax withholding. Therefore, state income tax should be withheld from these payments when federal income tax is withheld. The amount of state income tax withholding should be determined by the withholding tables provided in the Iowa employers' "Withholding Tax Guide."

In the case of state income tax withholding for sick pay benefits, state income tax is to be withheld from the benefits by the payer only if state income tax withholding is requested by the payee of the benefits. However, payees of sick pay benefits should probably not request withholding from the benefits if the payees are eligible for the disability income exclusion authorized in Iowa Code section 422.7 and described in rule 701—40.22(422). If withholding is requested by the payee, the withholding should be done at a 5 percent rate on the sick pay benefits. However, no withholding of state income tax should be made if the benefit payment is less than $250. Once withholding is started, it should continue until such time as the payee requests that no state income tax be withheld.

d. Voluntary state income tax withholding from unemployment benefit payments. Recipients of unemployment benefit payments described in Section 3402(p)(2) of the Internal Revenue Code may elect to have state income tax withheld from the benefit payments at a rate of 5 percent. An individual's election to have state income tax withheld from unemployment benefits is separate from any election to have federal income tax withheld from the benefits.

e. Withholding on lump-sum distributions from qualified retirement plans. For lump-sum distribution payments from qualified retirement plans made to Iowa residents, state income tax is required to be withheld under the conditions described in this paragraph. No state income tax is required to be withheld from a lump-sum distribution payment to an Iowa resident in a situation where the payment is not subject to Iowa income tax. See paragraph *"h"* for thresholds for withholding on lump-sum distributions issued on or after January 1, 2001. In addition, Iowa income tax is not required to be withheld on the distribution to the extent that the amount of the distribution or the taxable amount, if known by the payer, is less than $3,000. Iowa income tax is to be withheld from a lump-sum distribution made to an Iowa resident to the extent that federal income tax is being withheld from the distribution. The rate of withholding of state income tax from the lump-sum distribution is 5 percent from the total distribution or 5 percent from the taxable amount if that amount is known by the payer. Note that in the case of a lump-sum distribution, the Iowa income tax imposed on the taxable amount of the distribution is 25 percent of the federal income tax on the distribution.

f. Withholding of state income tax from nonwage payments to residents on the basis of tax tables and tax formulas. State income tax from the nonwage payments made to Iowa residents may be withheld on the basis of formulas and tables included in the Iowa withholding tax guide of the department of revenue. See paragraph *"h"* for threshold amounts for withholding from payments of pensions, annuities, individual retirement accounts, deferred compensation plans, and other retirement incomes which are made on or after January 1, 2001. When state income tax is being withheld based upon the formulas or tables in the withholding guide, the amounts of the nonwage payments are treated as wage payments for purposes of the tables or the formulas.

The frequency of the nonwage payments determines which of the withholding tables to use or the number of pay periods in the calendar year to use in the formula. For example, if the nonwage payment is made on a monthly basis, the monthly wage bracket withholding table should be utilized for withholding or 12 should be utilized in the formula to indicate that there will be 12 nonwage payments in the year.

The payers of nonwage payments should withhold state income tax from the nonwage payments to Iowa residents when federal income tax is being withheld from the nonwage payments. The payers should withhold from the nonwage payments to Iowa residents from tables or the formulas in the Iowa withholding guide on the basis of the number of withholding exemptions claimed on Form IA W-4 which has been completed by the payees of the payments. However, if a payee of a nonwage payment has not completed an IA W-4 form (Iowa employee's withholding allowance certificate) by the time a nonwage

payment is to be made by the payer of the nonwage payment, the payer is to withhold state income tax on the basis that the payee has claimed one withholding allowance or exemption.

In a situation when a payee of a nonwage payment completes Form IA W-4 and claims exemption from state income tax withholding when federal income tax is being withheld from the nonwage payment, the payer of the nonwage payment should withhold state income tax using one withholding allowance or exemption unless the payee has verified exemption from state income tax.

g. Withholding on distributions from qualified retirement plans that are not directly rolled over. State income tax is to be withheld at a rate of 5 percent from the gross amount or taxable amount if known by the payer of the distribution made to Iowa residents if the distributions are not transferred directly to an IRA, Section 403(a) annuity or another qualified retirement plan. The distributions that are subject to state income tax withholding are those distributions that are subject to 20 percent withholding for federal income tax purposes. However, if the gross amount or taxable amount of a distribution is less than $3,000, state income tax withholding is not required. See paragraph *"h"* for thresholds for withholding from payments of pensions, annuities, individual retirement accounts, deferred compensation plans, and other retirement plans which are made on or after January 1, 1999.

h. Withholding from distributions made on or after January 1, 2001, from pensions, annuities, individual retirement accounts, deferred compensation plans, and other retirement plans. Effective for distributions made on or after January 1, 2001, from pension plans, annuities, individual retirement accounts, deferred compensation plans, and other retirement plans, state income tax is generally required to be withheld from the distributions when federal income tax is being withheld from the distributions, unless one of the exceptions for withholding in this paragraph applies. For purposes of this paragraph, the term "pensions and other retirement plans" includes all distributions of retirement benefits covered by the partial exemption described in rule 701—40.47(422).

State income tax is not required to be withheld from a distribution from a pension or other retirement plan if the distribution is an income which is not subject to Iowa income tax, such as a distribution of railroad retirement benefits. State income tax is also not required to be withheld from a pension plan or other retirement plan if the amount of the distribution is $500 per month or less or if the taxable amount is $500 or less and the person receiving the distribution is eligible for the partial exemption of retirement benefits described in rule 701—40.47(422), if the state taxable amount can be determined by the payee of the distribution. There is also no requirement for withholding state income tax from a pension or other retirement plan if the distribution is $1,000 per month or less or if the taxable amount is $1,000 or less and the person receiving the distribution is eligible for the partial exemption of retirement benefits described in rule 701—40.47(422) and that person has indicated an intention to file a joint state income tax return for the year in which the distribution is made. In instances where the distribution amount or the taxable amount is more than $500 per month but less than $6,000 for the year, no state income tax will be required to be withheld, if the person receiving the distribution is eligible for the partial exemption of retirement benefits.

Finally, there is no requirement for withholding from a lump-sum payment from a qualified retirement plan if the lump-sum payment is $6,000 or less, the recipient is eligible for the partial exemption of distributions from pensions and other retirement plans, and the lump-sum payment is the only distribution from the retirement plan in the year.

46.1(3) *Voluntary state income tax withholding from unemployment benefit payments.* Rescinded IAB 3/2/05, effective 4/6/05.

This rule is intended to implement Iowa Code sections 96.3, 99B.21, 99D.16, 99E.19, 99F.18, 422.5, 422.7, and 422.16.

701—46.2(422) Computation of amount withheld.

46.2(1) *Amount withheld.*

a. General rules. Every employer required to deduct and withhold a tax on compensation paid in Iowa to an individual shall deduct and withhold for each payroll period an amount the total of which will approximate the employee's annual tax liability. "Payroll period" for Iowa withholding purposes shall have the same definition as in Section 3401 of the Internal Revenue Code and shall include

"miscellaneous payroll period" as that term is defined and used in that section and the associated regulations.

b. Methods of computations. Employers required to withhold Iowa income tax on compensation paid in this state shall compute the amount of tax to be withheld for each payroll period pursuant to the methods and rules provided herein.

(1) Tables. An employer may elect to use the withholding tables provided in the Iowa employers' withholding tax guide and withholding tables, which are available from the department of revenue.

(2) Formulas. Formulas that are provided in the Iowa employers' withholding tax guide and tax tables are available for employers who have a computerized payroll system.

(3) Other methods. An employer may request and be granted the use of an alternate method for computing the amount of Iowa tax to be deducted and withheld for each payroll period so long as the alternate proposal approximates the employee's annual Iowa tax liability. When submitting an alternate formula, the withholding agent should explain the formula and show examples comparing the amount of withholding under the proposed formula with the department's tables or computer formula at various income levels and by using various numbers of personal exemptions. Any alternate formula must be approved by the department prior to its use.

c. Supplemental wage payments. A supplemental wage payment is the payment of a bonus, commission, overtime pay, or other special payment that is made in addition to the employee's regular wage payment in a payroll period. When such supplemental wages are paid, the amount of tax required to be withheld shall be determined by using the current withholding tables or formulas. If supplemental wages are paid at the same time as regular wages, the regular tables or formulas are used in determining the amount of tax to be withheld as if the total of the supplemental and regular wages were a single wage payment for the regular payroll period. If supplemental wages are paid at any other time, the regular tables or formulas are used in determining the amount of tax to be withheld as if the supplemental wage were a single wage payment for the regular payroll period. When a withholding agent makes a payment of supplemental wages to an employee and the employer withholds federal income tax on a flat-rate basis, pursuant to Treasury Regulation §31.3402(g)-1, state income tax shall be withheld from the supplemental wages at a rate of 6 percent without consideration for any withholding allowances or exemptions.

d. Vacation pay. Amounts of so-called "vacation allowances" shall be subject to withholding as though they were regular wage payments made for the period covered by the vacation. If the vacation allowance is paid in addition to the regular wage payment for such period, the allowance shall be treated as supplemental wage payments.

46.2(2) *Correction of underwithholding or overwithholding.*

a. Underwithholding. If an employer erroneously underwithholds an amount of Iowa income tax required to be deducted and withheld from compensation paid to an employee within a payroll period, the employer should correct the error within the same calendar year by deducting the difference between the amount withheld and the amount required to be withheld from any compensation still owed the employee, even though such compensation may not be subject to withholding. If the error is discovered in a subsequent calendar year, no correction shall be made by the employer.

b. Overwithholding. If an employer erroneously overwithholds an amount of tax required to be deducted and withheld from compensation paid to an employee, repayment of such overwithheld amount shall be made in the same calendar year. Repayment may be made in either of two ways: (1) the amount of overwithholding may be repaid directly to the employee, in which case the employer must obtain written receipt showing the date and amount of the repayment, or (2) the employer may reimburse the employee by applying the overcollection against the tax required to be deducted and withheld on compensation to be paid in the same calendar year in which the overcollection occurred. If the error is discovered in a subsequent calendar year, no repayment shall be made.

c. Cross-reference. Rescinded IAB 3/2/05, effective 4/6/05.

46.2(3) *Withholding on supplemental wage payments.* Rescinded IAB 3/2/05, effective 4/6/05.

This rule is intended to implement Iowa Code section 422.16.

701—46.3(422) Forms, returns and reports.

46.3(1) *Employer registration.* Every employer or payer required to deduct and withhold Iowa income tax must register with the department of revenue by filing an "Iowa Business Tax Registration Form." The form shall indicate the employer's or payer's federal identification number. If an employer or payer has not received a federal employer's identification number, the department will issue a temporary identification number. The employer or payer must notify the department when the federal employer identification number is assigned.

When initial payment of wages subject to Iowa withholding tax occurs late in the calendar quarter, or before the employer's or payer's federal employer's identification number is assigned by the Internal Revenue Service, the Iowa business tax registration form shall be forwarded along with the first quarterly withholding return. The responsible party(ies) shall be listed on the form.

If an employer deducts and withholds Iowa income tax but does not file the Iowa business tax registration form, the department may register the employer using the best information available. If an employer uses a service provider to report and remit Iowa withholding tax on behalf of the employer, the department may use information obtained from the service provider to register the employer if an Iowa business tax registration form is not filed. This information would include, but is not limited to, the name, address, federal employer's identification number, filing frequency, withholding agent and responsible party(ies) of the employer.

46.3(2) *Allowance certificate.*

a. General rules. On or before the date on which an individual commences employment with an employer, the individual shall furnish the employer with a signed Iowa employee's withholding allowance certificate (IA W-4) indicating the number of withholding allowances which the individual claims, which in no event shall exceed the number to which the individual is entitled. The employer is required to request a withholding allowance certificate from each employee. If the employee fails to furnish a certificate, the employee shall be considered as claiming no withholding allowances. See subrule 46.3(4) for information on Form IA W-4P which is to be used by payers of pensions, annuities, deferred compensation, individual retirement accounts and other retirement incomes.

The employer must submit to the department of revenue a copy of a withholding allowance certificate received from an employee if:

(1) The employee claimed more than a total of 22 withholding allowances, or

(2) The employee is claiming an exemption from withholding and it is expected that the employee's wages from that employer will normally exceed $200 per week.

Employers required to submit withholding certificates should use the following address:

Iowa Department of Revenue
Compliance Division
Examination Section
Hoover State Office Building
P.O. Box 10456
Des Moines, Iowa 50306

The department will notify the employer whether to honor the withholding certificate or to withhold as though the employee is claiming no withholding allowances.

b. Form and content. The "Iowa Employee's Withholding Allowance Certificate" (IA W-4) must be used to determine the number of allowances that may be claimed by an employee for Iowa income tax withholding purposes. Generally, the greater number of allowances an employee is entitled to claim, the lower the amount of Iowa income tax to be withheld for the employee. The following withholding allowances may be claimed on the IA W-4 form:

(1) Personal allowances. An employee can claim one personal allowance or two if the individual is eligible to claim head of household status. The employee can claim an additional allowance if the employee is 65 years of age or older and another additional allowance if the employee is blind.

If the employee is married and the spouse either does not work or is not claiming an allowance on a separate W-4 form, the employee can claim an allowance for the spouse. The employee may also claim

an additional allowance if the spouse is 65 years of age or older and still another allowance if the spouse is blind.

(2) Dependent allowances. The employee can claim an allowance for each dependent that the employee will be able to claim on the employee's Iowa return.

(3) Allowances for itemized deductions. The employee can claim allowances for itemized deductions to the extent the total amount of estimated itemized deductions for the tax year for the employee exceeds the applicable standard deduction amount by $200. In instances where an employee is married and the employee's spouse is a wage-earner, the total allowances for itemized deductions for the employee and spouse should not exceed the aggregate amount itemized deduction allowances to which both taxpayers are entitled.

(4) Allowances for the child/dependent care credit. Employees who expect to be eligible for the child/dependent care credit for the tax year can claim withholding allowances for the credit. The allowances are determined from a chart included on the IA W-4 form on the basis of net income shown on the Iowa return for the employee. If the employee is married and has filed a joint federal return with a spouse who earns Iowa wages subject to withholding, the withholding allowances claimed by both spouses for the child/dependent care credit should not exceed the aggregate number of allowances to which both taxpayers are entitled. Taxpayers that expect to have a net income of $45,000 or more for a tax year beginning on or after January 1, 2006, should not claim withholding allowances for the child and dependent care credit, since these taxpayers are not eligible for the credit.

(5) Allowances for adjustments to income. For tax years beginning on or after January 1, 2008, employees can claim allowances for adjustments to income which are set forth in Treasury Regulation §31.3402(m)-1, paragraph *"b."* This includes adjustments to income such as alimony, deductible IRA contributions, student loan interest and moving expenses which are allowed as deductions in computing income subject to Iowa income tax. In instances where an employee is married and the employee's spouse is a wage earner, the withholding allowances claimed by both spouses for adjustments to income for the employee and spouse should not exceed the aggregate number of allowances to which both taxpayers are entitled.

c. Change in allowances which affect the current calendar year.

(1) Decrease. If, on any day during the calendar year, the number of withholding allowances to which an employee is entitled is less than the number of withholding allowances claimed by the individual on a withholding certificate then in effect, the employee must furnish the employer with a new Iowa withholding allowance certificate relating to the number of withholding allowances which the employee then claims, which must in no event exceed the number to which the employee is entitled on such day.

(2) Increase. If, on any day during the calendar year, the number of withholding allowances to which an employee is entitled is more than the number of withholding allowances claimed by the employee on the withholding allowance certificate then in effect, the employee may furnish the employer with a new Iowa withholding allowance certificate on which the employee must in no event claim more than the number of withholding allowances to which the employee is entitled on such day.

d. Change in allowances which affect the next calendar year. If, on any day during the calendar year, the number of withholding allowances to which the employee will be, or may reasonably be expected to be, entitled to for the employee's taxable year which begins in, or with, the next calendar year is different from the number to which the employee is entitled on such day, the following rules shall apply:

(1) If such number is less than the number of withholding allowances claimed by an employee on an Iowa withholding allowance certificate in effect on such day, the employee must within a reasonable time furnish the employee's employer with a new withholding allowance certificate reflecting the decrease.

(2) If such number is greater than the number of withholding allowances claimed by the employee on an Iowa withholding allowance certificate in effect on such day, the employee may furnish the employee's employer with a new withholding allowance certificate reflecting the increase.

e. Duration of allowance certificate. An Iowa withholding allowance certificate which is in effect pursuant to these regulations shall continue in effect until another withholding allowance certificate takes effect. Employers should retain copies of the IA W-4 forms for at least four years.

46.3(3) *Reports and payments of income tax withheld.*

a. Returns of income tax withheld from wages.

(1) Quarterly returns. Every withholding agent required to withhold tax on compensation paid for personal services in Iowa shall make a return for the first calendar quarter in which tax is withheld and for each subsequent calendar quarter, whether or not compensation is paid therein, until a final return is filed. The withholding agent's "Quarterly Withholding Return is the form prescribed for making the return required under this paragraph. Monthly tax deposits or semimonthly tax deposits may be required in addition to quarterly returns. See subparagraphs (2) and (3) of paragraph 46.3(3)*"a."* In some circumstances, only an annual return and payment of withheld taxes will be required; see paragraph 46.3(3)*"c."*

Payments shall be based upon the tax required to be withheld and must be remitted in full.

A withholding agent is not required to list the name(s) of the agent's employee(s) when filing quarterly returns, nor is the withholding agent required to show on the employee's paycheck or voucher the amount of Iowa income tax withheld.

If a withholding agent's payroll is not constant, and the agent finds that no wages or other compensation was paid during the current quarter, the agent shall enter the numeral "zero" on the return and submit the return as usual.

(2) Monthly deposits. Every withholding agent required to file a quarterly withholding return shall also file a monthly deposit if the amount of tax withheld during any calendar month exceeds $500, but is less than $10,000. A withholding agent needs to file a monthly deposit even if no payment is due. No monthly deposit is required for the third month in any calendar quarter. The information otherwise required to be reported on the monthly deposit for the third month in a calendar quarter shall be reported on the quarterly return filed for that quarter, and no monthly deposit need be filed for such month.

(3) Semimonthly deposits. Every withholding agent who withholds more than $5,000 in a semimonthly period must file a semimonthly tax deposit. A semimonthly period is defined as the period from the first day of a calendar month through the fifteenth day of a calendar month, or the period from the sixteenth day of a calendar month through the last day of a calendar month. When semimonthly deposits are required, a withholding agent must still file a quarterly return.

(4) Final returns. A withholding agent who in any return period permanently ceases doing business shall file the returns required by subparagraphs (1), (2) and (3) of paragraph 46.3(3)*"a"* as final returns for such period. The withholding agent shall cancel the withholding tax registration by notifying the department.

b. Time for filing returns.

(1) Quarterly returns. Each return required by subparagraph 46.3(3)*"a"*(1) shall be filed on or before the last day of the first calendar month following the calendar quarter for which such return is made.

(2) Monthly tax deposits. Monthly deposits required by subparagraph 46.3(3)*"a"*(2) shall be filed on or before the fifteenth day of the second and third months of each calendar quarter for the first and second months of each calendar quarter, respectively.

(3) Semimonthly tax deposits. Semimonthly deposits required by subparagraph 46.3(3)*"a"*(3) for the semimonthly period from the first day of the month through the fifteenth day of the month shall be filed with payment of the tax on or before the twenty-fifth day of the same month. The semimonthly deposits required by subparagraph 46.3(3)*"a"*(3) for the semimonthly period from the sixteenth day of the month through the last day of the month shall be filed with payment of the tax on or before the tenth day of the month following the month in which the tax is withheld.

For withholding that occurs on or after January 1, 2005, quarterly returns, amended returns, monthly deposits and semimonthly deposits shall be made electronically in a format and by means specified by the department of revenue. Tax payments are considered to have been made on the date that the tax is transmitted and released by the vendor to the department.

(4) Determination of filing status. Effective July 1, 2002, the department and the department of management have the authority to change filing thresholds by department rule. This paragraph sets forth the filing thresholds for each filer based on the amount withheld for withholding that occurs on or after January 1, 2003.

The following criteria will be used by the department to determine if a change in filing status is warranted.

Filing Status	Threshold	Test Criteria
Semimonthly	Greater than $120,000 in annual withholding taxes (more than $5,000 in a semimonthly period).	Tax remitted in 3 of most recent 4 quarters examined exceeds $30,000.
Monthly	Between $6,000 and $120,000 in annual withholding taxes (more than $500 in a monthly period).	Tax remitted in 3 of most recent 4 quarters examined exceeds $1,500 per quarter.
Quarterly	Less than $6,000 in annual withholding taxes.	Tax remitted in 3 of most recent 4 quarters examined is less than $1,500 per quarter.
Annual	Less than 3 employees.	

When it is determined that a withholding agent's filing status is to be changed, the withholding agent shall be notified in writing. A withholding agent has the option of requesting, within 30 days of the department's notice of a change in filing frequency, that the withholding agent file more or less frequently than required by the department. To request filing on a less frequent basis than assigned by the department, the request must be in writing and submitted to the department. A withholding agent's written request to be allowed to file less frequently than the filing status assigned by the department will be reviewed by the department, and a written determination will be issued to the withholding agent who made the request.

A change in assigned filing status to file on a less frequent basis will be granted in only two instances:

- Incorrect historical data is used in the conversion. A business may meet the criteria based on the original filing data, but, upon investigation, the filing history may prove that the business does not meet the dollar criteria because of adjustments, amended returns, or requests for refunds.
- Data available may have been distorted by the fact that the data reflected an unusual pattern in tax collection. The factors causing such a distortion must be documented and approved by the department.

A withholding agent may also request to file more frequently than assigned by the department. This request may be made orally, in writing, in person, or by telephone.

The department and the department of management may perform review of filing thresholds every five years or as needed based on department discretion. Factors the departments will consider in determining if the filing thresholds need to be changed include, but are not limited to: tax rate changes, inflation, the need to maintain consistency with required multistate compacts, changes in law, and migration between filing brackets.

c. Reporting annual withholding.

(1) Any withholding agent who does not have employee withholding but who is required to withhold state income tax from other distributions is exempted from the provisions of subparagraphs (2) and (3) of paragraph 46.3(3)*"a,"* if these distributions are made annually in one calendar quarter. These withholding agents need only comply with the reporting requirements of the one calendar quarter in which the tax is withheld, and make the required year-end reports.

(2) Every withholding agent employing not more than two individuals and who expects to employ either or both for the full calendar year may pay with the withholding tax return due for the first calendar quarter of the year the full amount of income taxes which would be required to be withheld from the

wages for the full calendar year. The withholding agent shall advise the department of revenue that annual reporting is contemplated and shall also state the number of persons employed. The withholding agent shall compute the annual withholding from wages by determining the normal withholding for one pay period and multiply this amount by the total number of pay periods within the calendar year. The withholding agent shall be entitled to recover from the employee(s) any part of such lump-sum payment that represents an advance to the employee(s). If a withholding agent pays a lump sum with the first quarterly return, the agent shall be excused from filing further quarterly returns for the calendar year involved unless the agent hires other or additional employees. The "Verified Summary of Payments Report" shall be filed at the end of the tax year.

d. Reports for employee.

(1) General rule. Every employer required to deduct and withhold tax from compensation of an employee must furnish to each employee with respect to the compensation paid in Iowa by such employer during the calendar year, a statement containing the following information: the name, address, and federal employer identification number of the employer; the name, address, and social security number of the employee; the total amount of compensation paid in Iowa; the total amount deducted and withheld as tax under subrule 46.1(1).

(2) Form of statement. The information required to be furnished an employee under the preceding paragraph shall be furnished on an Internal Revenue Service combined Wage and Tax Statement, Form W-2, hereinafter referred to as "combined W-2." Any reproduction, modification or substitution for a combined W-2 by the employer must be approved by the department. Employers should keep copies of the combined W-2 for four years from the end of the year for which the combined W-2 applies.

(3) Time for furnishing statement. Each statement required by paragraph *"d"* to be furnished for a calendar year and each corrected statement required for any prior year shall be furnished to the employee on or before January 31 of the year succeeding such calendar year, or if an employee's employment is terminated before the close of a calendar year without expectation that it will resume during the same calendar year, within 30 days from the day on which the last payment of compensation is made, if requested by such employee. See paragraph 46.3(3)*"e"* for provisions relating to the filing of copies of the combined W-2 with the department of revenue.

(4) Corrections. An employer must furnish a corrected combined W-2 to an employee if, after the original statement has been furnished, an error is discovered in either the amount of compensation shown to have been paid in Iowa for the prior year or the amount of tax shown to have been deducted and withheld in the prior year. Such statement shall be marked "corrected by the employer." See paragraph 46.3(3)*"e"* for provisions relating to the filing of a corrected combined W-2 with the department.

(5) Undelivered combined W-2. Any employee's copy of the combined W-2 which, after reasonable effort, cannot be delivered to an employee shall be transmitted to the department with a letter of explanation.

(6) Lost or destroyed. If the combined W-2 is lost or destroyed, the employer shall furnish a substitute copy to the employee. The copy shall be clearly marked "Reissued by Employer."

e. Annual verified summary of payments reports.

(1) Every withholding agent required to withhold Iowa income tax under subrules 46.1(1), 46.1(2), 46.1(3), and 46.4(1) is to furnish to the department of revenue on or before the last day of February following the tax year an annual "Verified Summary of Payments Report" (VSP).

The withholding agent completing the VSP form must enter the total Iowa income tax withheld that is shown on the W-2 forms and 1099 forms for the year, the new jobs credits, supplemental jobs credits, accelerated career education credits and housing assistance credits claimed on withholding returns for the year. In addition, the withholding agent must enter on the VSP the withholding payments made for the year. If the amount of Iowa income tax withholding remitted to the department of revenue for the year is less than the withholding tax and withholding credits claimed, the withholding agent is to report the additional withholding tax due on an amended return and submit payment to the department.

If the Iowa income tax shown as withheld on the W-2s and 1099s issued for the tax year is less than the amount of withholding tax remitted to the department of revenue by the withholding agent, the agent should file an amended return with the department reflecting the excess tax paid.

(2) For Verified Summary of Payments Report forms filed with the department of revenue for the year 2000 and subsequent years, the withholding agents are not to submit W-2 forms and 1099 forms with the reports. However, the withholding agents should supply W-2 forms or 1099 forms as requested by personnel of the department of revenue if the request for the forms is made within three years from the end of the year for which the W-2 forms or 1099 forms apply. Therefore, if a request is made to a withholding agent for a W-2 form or a 1099 form for the year 2000, the request is valid if the request is postmarked, faxed or made on or before December 31, 2003.

f. Withholding deemed to be held in trust. Funds withheld from wages for Iowa income tax purposes are deemed to be held in trust for payment to the department of revenue. The state and the department shall have a lien upon all the assets of the employer and all the property used in the conduct of the employer's business to secure the payment of the tax as withheld under the provisions of this rule. An owner, conditional vendor, or mortgagee of property subject to such lien may exempt the property from the lien granted to Iowa by requiring the employer to obtain a certificate from the department, certifying that such employer has posted with the department security for the payment of the amounts withheld under this rule.

g. Payment of tax deducted and withheld. The amount of tax shown to be due on each deposit or return required to be filed under subrule 46.3(3) shall be due on or before the date on which such deposit or return is required to be filed.

h. Correction of underpayment or overpayment of taxes withheld.

(1) Underpayment. If a return is filed for a return period under rule 46.3(422) and less than the correct amount of tax is reported on the return and paid to the department, the employer shall report and pay the additional amount due by filing an amended withholding tax return.

(2) Overpayment. If an employer remits more than the correct amount of tax for a return period, the employer must file an amended withholding tax return and report the correct amount of withholding tax due.

46.3(4) *Iowa W-4P—withholding certificate for pension or annuity payments.* For payments made from pension plans, annuity plans, individual retirement accounts, or deferred compensation plans to residents of Iowa, payers of these retirement benefits are to use Form IA W-4P for withholding of state income tax from the benefits. Generally, state income tax is required to be withheld from payments of distributions from the retirement incomes described above when federal income tax is being withheld from the payments. However, no state income tax is required to be withheld to the extent the monthly payment amount is $500 or less or the taxable amount per month is $500 or less if the payee is eligible for the retirement benefits exclusion described in rule 701—40.47(422). In addition, no state income tax is required to be withheld to the extent the monthly payment amount is $1,000 or less or the taxable amount per month is $1,000 or less if the payee is married and eligible for the retirement benefits exclusion described in rule 701—40.47(422).

Form IA W-4P is available from the department for payers of retirement benefits that intend to withhold at a rate of 5 percent from the payment amount or taxable payment amount after the $6,000 to $12,000 exclusion is considered. Note that the $6,000 to $12,000 exclusion is to be allocated to all retirement benefit payments made in the year and not just the first $6,000 to $12,000 in payments made in the year to an individual. If an individual receives retirement benefits and has not completed Form IA W-4P, the payer is directed to withhold Iowa income tax from the retirement benefit payment after a $6,000 exclusion is allowed on an annual basis.

Payers of retirement benefits that want to use withholding formulas or tables to withhold state income tax instead of at the 5 percent rate may design their own IA W-4P withholding certificate form without approval of the department.

The payers are not responsible for improper choices made by a payee in completion of the IA W-4P. However, payers cannot accept a request for exemption from the withholding of state income tax made by a payee if federal income tax is being withheld unless the payee is eligible for exemption from withholding.

This rule is intended to implement Iowa Code sections 422.7 and 422.12C, and section 422.16 as amended by 2007 Iowa Acts, House File 904, section 3.

701—46.4(422) Withholding on nonresidents.

46.4(1) *General rules.* Payers of Iowa income to nonresidents are required to withhold Iowa income tax and to remit the tax to the department on all payments of Iowa income to nonresidents except payments of wages to nonresidents engaged in film production or television production described in subrule 46.4(5); income payments for agricultural commodities or products described in subrule 46.4(6); deferred compensation payments, pension, and annuity payments attributable to personal services in Iowa by nonresidents described in subrule 46.4(7); and partnership distributions from certain publicly traded partnerships described in subrule 46.4(8). Withholding agents should use the following methods and rates in withholding for nonresidents:

a. *Wages or salaries.* Use the same withholding procedures, tables, formulas, and rates as are used for residents. See rule 46.2(422). Subrule 46.4(5) is an exception to the general rule. In addition, in accordance with the reciprocal tax agreement between Iowa and Illinois described in 701—subrule 38.13(1), Iowa withholding tax is not withheld on wages of Illinois residents who perform personal services in Iowa.

b. *Payments other than wages, salaries, and other compensation for personal services.* In lieu of using withholding tables or computer formulas to determine the amount of Iowa income tax to be withheld from payments made to nonresidents other than for salaries, wages, or other compensation for personal services, or income payments to nonresidents for agricultural commodities or products, Iowa income tax should be withheld at a rate of 5 percent of the amount of the payment. Subrule 46.4(6) describes the optional exemption from withholding of income payments made to nonresidents for the sale of agricultural commodities or products.

Nonresidents who prefer to make Iowa estimate payments instead of having Iowa income tax withheld from income payments from Iowa sources should refer to subrule 46.4(3) and rule 701—49.3(422).

46.4(2) *Income of nonresidents subject to withholding.* Listed below are various types of income paid to nonresidents which are subject to withholding tax. The list is for illustrative purposes only and is not deemed to be all-inclusive.

1. Personal service, including salaries, wages, commissions and fees for personal service wholly performed within this state and such portions of similar income of nonresident traveling salespersons or agents as may be derived from services rendered in this state.

2. Rents and royalties from real or personal property located within this state.

3. Interest or dividends derived from securities or investments within this state, when such interests or dividends constitute income of any business, trade, profession or occupation carried on within this state and subject to taxation.

4. Income derived from any business of a temporary nature carried on within this state by a nonresident, such as contracts for construction and similar contracts.

5. The distributive share of a nonresident beneficiary of an estate or trust, limited, however, to the portion thereof subject to Iowa income tax in the hands of the nonresident.

6. Income derived from sources within this state by attorneys, physicians, engineers, accountants, and similar sources as compensation for services rendered to clients in this state.

7. Compensation received by nonresident actors, singers, performers, entertainers, and wrestlers for performances in this state. See subrule 46.4(5) for an exception to this rule.

8. Income received by a nonresident partner or shareholder of a partnership or S corporation doing business in Iowa. See subrule 46.4(8) for the exemption from withholding for partnership distributions from certain publicly traded partnerships.

9. The Iowa gross income of a nonresident who is employed and receiving compensation for services shall include compensation for personal services which are rendered within this state. Compensation for personal services rendered by a nonresident wholly without the state is excluded from gross income of the nonresident even though the payment of such compensation may be made by a resident individual, partnership or corporation.

10. The gross income from commissions earned by a nonresident traveling salesperson, agent or other employee for services performed or sales made whose compensation depends directly on volume

of business transacted by the nonresident, includes that proportion of the total compensation received which the volume of business or sales by the employee within this state bears to the total volume of business or sales within and without the state.

11. Payments made to landlords by agents, including elevator operators, for grain or other commodities which have been received by the landlord as rent constitute taxable income of the landlord when sold by the landlord. See subrule 46.4(6) for the exemption from withholding on incomes paid to nonresidents for the sale of agricultural commodities or products.

12. Wages paid to nonresidents of Iowa who earn the compensation from regularly assigned duties in Iowa and one or more other states for a railway company or for a motor carrier are not taxable to Iowa. Pursuant to the Amtrak Reauthorization and Improvement Act of 1990, the nonresidents in this situation are subject only to the income tax laws of their states of residence. Thus, when an Iowa resident performs regularly assigned duties in two or more states for a railroad or a motor carrier, the only state income tax that should be withheld from the wages paid for these duties is Iowa income tax.

46.4(3) *Nonresident certificate of release.* Where a nonresident payee makes the option to pay estimated Iowa income tax, a certificate of release from withholding will be issued by the Iowa department of revenue to the designated payers. The certificate of release will be forwarded to the specified withholding agent(s) and payer(s), and will state the amount of income covered by the estimated tax payment. Any income paid in excess of the amount so stated will be subject to withholding tax at the current rate. See 701—Chapter 49 for information on making estimate payments.

46.4(4) *Recovering excess tax withheld.* A nonresident payee may recover any excess Iowa income tax withheld from income of the payee by filing an Iowa income tax return after the close of the tax year and reporting income from Iowa sources in accordance with the income tax return instructions.

46.4(5) *Exemption from withholding of nonresidents engaged in film production or television production in this state.* Nonresidents engaged in film production or television production in this state are not subject to state withholding on wages earned from this activity if the nonresidents' employer has applied to the department for exemption from withholding of state income tax and the employer's application includes the following information about the nonresident employees:

a. The employees' names.

b. The employees' permanent mailing addresses.

c. The employees' social security numbers.

d. The estimated amounts the employees are to be paid for services provided by the employees in this state.

The employer's application for exemption from withholding for the nonresident employees will not be approved by the department if the employer fails to provide all the required information.

Only those nonresident employees described in the application for exemption from withholding will be covered when the application is approved by the department. If additional nonresident employees are hired after the initial application for exemption is filed, those employees should be described in an amendment to the application for exemption which must be filed with the department of revenue.

Applications for exemption from withholding for nonresident employees engaged in film production or television production should be directed to the Iowa Department of Revenue, Compliance Division, Examination Section, Hoover State Office Building, P.O. Box 10456, Des Moines, Iowa 50306.

46.4(6) *Exemption from withholding for the sale of agricultural commodities or products.* Withholding agents are not required to withhold state income tax from income payments made to nonresidents or representatives of the nonresidents for the sales of agricultural commodities or products, if the withholding agents provide certain information to the department of revenue about the sales. The following paragraphs describe the agricultural commodities and products that are included in the exemption from withholding, specify the information needed on the sales and clarify other issues related to the exemption from withholding. 701—subrule 49.3(4) describes an election for withholding agents to make estimate payments on behalf of nonresident taxpayers for net incomes of the nonresidents from agricultural commodities or products.

a. Agricultural commodities or products included in the exemption from withholding. Withholding agents are not required to withhold state income tax from income payments they make to

nonresidents or representatives of the nonresidents for the sale of commodity credit certificates, grain (corn, soybeans, wheat, oats, etc.), livestock (cattle, hogs, sheep, horses, etc.), domestic fowl (chickens, ducks, turkeys, geese, etc.), or any other agricultural commodities or products, if the withholding agents provide the department of revenue with the information specified in paragraph *"b"* of this subrule.

b. Information to be provided to the department by withholding agents claiming exemption from withholding on income payments made to nonresidents for the sales of agricultural items. The following information is to be provided on a listing to the department of revenue by withholding agents electing exemption from withholding of state income tax on income payments made in the calendar year to nonresidents or representatives of the nonresidents on the sales of agricultural commodities or products made in the year:

(1) Name of the nonresident (last name, first name and middle initial).

(2) Home address of the nonresident.

(3) Social security number of the nonresident.

(4) Aggregate payments made in the calendar year for the nonresident (includes payments made to a representative of the nonresident on behalf of the nonresident).

(5) Two-digit Iowa county code number of the first one of the following that applies to the nonresident:

1. County in which the nonresident owns real property or personal property.

2. County in which the nonresident leases real property or personal property.

3. County in which the nonresident has agricultural products stored or in which livestock is located.

4. County where the nonresident has performed custom farming activities in the year.

5. County where the nonresident has other business activities in Iowa other than merely sales activities.

If a nonresident does not own or lease property in Iowa or have other connection with Iowa as described in subparagraph 46.4(6)*"b"*(5), items "3," "4," and "5," the nonresident is not subject to Iowa income tax on the income payments for agricultural commodities or products and the nonresident's income payments should not be included on the listing.

In a situation where a withholding agent is unable to get all the information that is to be provided to the department on income payments on sales of agricultural items, the agent is relieved of the requirement to withhold if the agent can provide written evidence showing an attempt was made to acquire all the information.

The listing of aggregate income payments to nonresidents with an Iowa connection for sales of agricultural commodities and products in the calendar year should be sent to the department by the withholding agent on or before April 1 of the year following the year in which the income payments were made. In lieu of the listing, the withholding agent may compile the information on aggregate income payments to nonresidents on a magnetic tape, diskette or other electronic reporting, provided the submission meets departmental guidelines described in 701—paragraph 8.3(1)*"e."*

The listing, magnetic tape or other electronic submission should be sent to the following address: Iowa Department of Revenue, Compliance Division, Examination Section, Hoover State Office Building, P.O. Box 10456, Des Moines, Iowa 50306; idr@iowa.gov.

A withholding agent is not exempt from withholding of state income tax on income payments to nonresidents on sales of agricultural commodities or products if the withholding agent does not provide the department of revenue with information on income payments made during the year by April 1 of the subsequent year.

c. Rescinded IAB 3/2/05, effective 4/6/05.

46.4(7) *Exemption from withholding of payments made to nonresidents for deferred compensation, pensions, and annuities.* Iowa income tax withholding is not required from payments of deferred compensation, pensions, and annuities made to nonresidents which are attributable to personal services of the nonresidents in Iowa since these payments are not subject to Iowa income tax. See rule 701—40.45(422) for the exclusion from Iowa income tax for these payments received by nonresidents.

46.4(8) *Exemption from withholding of partnership distributions made to nonresidents of certain publicly traded partnerships.* For tax years beginning on or after January 1, 2008, a nonresident who is a partner in a publicly traded partnership as defined in Section 7704(b) of the Internal Revenue Code is not subject to state withholding tax on the partner's pro rata share, provided that the publicly traded partnership submits the following information to the department for each partner whose Iowa income from the partnership exceeded $500:

a. Partner's name.

b. Partner's address.

c. Partner's taxpayer identification number.

d. Partner's pro rata share of Iowa income from the partnership for the tax year.

A partnership is a publicly traded partnership if the interests in the partnership are traded on an established securities market or the interests in the partnership are readily traded on a secondary market or its substantial equivalent.

This rule is intended to implement Iowa Code section 422.15, Iowa Code section 422.16 as amended by 2007 Iowa Acts, House File 923, section 3, and Iowa Code sections 422.17 and 422.73.

701—46.5(422) Penalty and interest.

46.5(1) *Penalty.* See rule 701—10.6(421) for penalty for tax periods beginning on or after January 1, 1991. See rule 701—10.8(421) for statutory exemptions to penalty for tax periods beginning on or after January 1, 1991.

46.5(2) *Computation of interest on unpaid tax.* Interest shall accrue on tax due from the original due date of the return. Interest on refunds of any portion of the tax imposed by statute which has been erroneously refunded and which is recoverable by the department shall bear interest as provided by law from the date of payment of the refund, with each fraction of a month considered to be an entire month. See rule 701—10.2(421) for the statutory interest rate.

All payments shall be first applied to the penalty and then to the interest, and the balance, if any, to the amount of tax due.

46.5(3) *Computation of interest on overpayments.* If the amount of tax determined to be due by the department is less than the amount paid, the excess to be refunded will accrue interest from the first day of the second calendar month following the date of payment or the date the return was due to be filed or was filed, whichever is the later.

This rule is intended to implement Iowa Code sections 421.27, 422.16 and 422.25.

701—46.6(422) Withholding tax credit to workforce development fund. Upon payment in full of a certificate of participation or other obligation issued to fund a job training program under Iowa Code chapter 260E, the community college which provided the training is to notify the Iowa department of economic development of the amount paid by the employer or business to the community college during the previous 12 months. The Iowa department of economic development is to notify the department of revenue of this amount. The department is to credit 25 percent of this amount to the workforce development fund in each quarter for the next ten years from the withholding tax paid by the employer or business. If the withholding tax paid by the employer or business for a quarter is not sufficient to cover the sum to be credited to the workforce development fund, the sum to be credited is to be reduced accordingly. The aggregate amount from all employers to be transferred to the workforce development fund in a year is not to exceed $4 million for fiscal years beginning on or after July 1, 2001.

This rule is intended to implement Iowa Code section 422.16A.

701—46.7(422) ACE training program credits from withholding. The accelerated career education (ACE) program is a training program administered by the Iowa department of economic development to provide technical training in state community colleges for employees in highly skilled jobs in the state to the extent that the training is authorized in an agreement between an employer or group of employers and a community college for the training of certain employees of the employer or group of employers. If a community college and an employer or group of employers enter into a program agreement for ACE

training, a copy of the agreement is to be sent to the department of revenue. No costs incurred prior to the date of the signing between a community college and an employer or group of employers may be reimbursed or are eligible for program job credits, including job credits from withholding unless the costs are incurred on or after July 1, 2000.

46.7(1) The costs of the ACE training program may be paid from the following sources:

a. Program job credits which the employer receives on the basis of the number of program job positions agreed to by the employer for the training program;

b. Cash or in-kind contributions by the employer toward the costs of the program which must be at least 20 percent of the total cost of the program;

c. Tuition, student fees, or special charges fixed by the board of directors of the community college to defray costs of the program;

d. Guarantee by the employer of payments to be received under paragraphs *"a"* and *"b"* of this subrule.

This rule pertains only to the program job credits from withholding described in paragraph *"a."*

46.7(2) ACE training programs financed by job credits from withholding. In situations when an employer or group of employers and a community college have entered into an agreement for training under the ACE program and the agreement provides that the training will be financed by credits from withholding, the amount of funding will be determined by the program job credits identified in the agreement. Eligibility for the program job credits is based on certification of program job positions and program job wages by the employer at the time established in the agreement with the community college. An amount of up to 10 percent of the gross program job wage as certified by the employer in the agreement shall be credited from the total amount of Iowa income tax withheld by the employer. For example, if there were 20 employees designated to be trained in the agreement and their gross wages were $600,000, the gross program job wage would be $600,000. Therefore, 10 percent of the gross program job wage in this case would be $60,000, and this amount would be credited against Iowa income tax which would ordinarily be withheld from the wages of all employees of the employer and remitted to the department of revenue on a quarterly basis. The amount credited against the withholding tax liability of the employer would be paid to the community college training the employer's employees under the ACE program. The employer may take the credits against withholding tax on returns filed with the department of revenue until such time as the program costs of the ACE program are considered to be satisfied.

This rule is intended to implement Iowa Code sections 260G.4A and 422.16.

701—46.8(260E) New job tax credit from withholding. The Iowa industrial new jobs training program is a program administered by the Iowa department of economic development for projects established by a community college for the creation of jobs by providing education and training of workers for new jobs for new or expanding industries. For employers that have entered into an agreement with a community college under Iowa Code chapter 260E, a credit equal to 1.5 percent of the wages paid by the employer to each employee covered by the agreement can be taken on the Iowa withholding tax return. If the amount of withholding by the employer is less than 1.5 percent of the wages paid to the employees covered by the agreement, the employer can take the remaining credit against Iowa tax withheld for other employees. The administrative rules for the Iowa industrial new jobs training program administered by the Iowa department of economic development may be found in 261—Chapter 5.

This rule is intended to implement Iowa Code section 260E.5.

701—46.9(15) Supplemental new jobs credit from withholding and alternative credit for housing assistance programs.

46.9(1) *Supplemental new jobs credit from withholding.* For eligible businesses approved by the Iowa department of economic development under the new jobs and income program or the enterprise zone program, a credit equal to an additional 1.5 percent of the wages paid to employees in new jobs covered under these programs can be taken on the Iowa withholding tax return. This supplemental new jobs credit is in addition to the credit described in rule 46.8(260E). The administrative rules for the

new jobs and income program and the enterprise zone program administered by the Iowa department of economic development may be found in 261—Chapters 58 and 59.

46.9(2) *Alternative credit for housing assistance programs.* As an alternative to the credit described in subrule 46.9(1) for eligible businesses in an enterprise zone, a business may provide a housing assistance program in the form of down payment assistance or rental assistance for employees in new jobs. A credit equal to 1.5 percent of the wages paid to employees participating in a housing assistance program may be claimed on the Iowa withholding tax return. The administrative rules for the enterprise zone program administered by the Iowa department of economic development may be found in 261—Chapter 59.

This rule is intended to implement Iowa Code section 15E.196 and Supplement section 15E.197.

701—46.10(403) Targeted jobs withholding tax credit. For employers that created targeted jobs in an urban renewal area and that enter into a withholding agreement with pilot project cities approved by the Iowa department of economic development, a credit equal to 3 percent of the gross wages paid to employees under the withholding agreement can be taken on the Iowa withholding tax return. The employer shall remit the amount of the credit to the pilot project city. The administrative rules for the targeted jobs withholding tax credit program administered by the Iowa department of economic development may be found in 261—Chapter 71.

If the amount of withholding by the employer is less than 3 percent of the wages paid to the employees covered under the withholding agreement, the employer can take the remaining credit against Iowa tax withheld for other employees or may carry the credit forward for up to ten years or until depleted, whichever is the earlier.

If an employer also has a new job credit from withholding provided in rule 701—46.8(260E) or the supplemental new jobs credit from withholding provided in subrule 46.9(1), these credits shall be collected and disbursed prior to the collection and disbursement of the targeted jobs withholding tax credit.

The following nonexclusive examples illustrate how this rule applies:

EXAMPLE 1: Company A does not have a withholding credit under Iowa Code chapter 260E or a supplemental new jobs credit under Iowa Code chapter 15E. Company A enters into a withholding agreement, and the withholding rate for employees covered under the agreement is 4 percent of the wages paid. Company A will be allowed a credit on the Iowa withholding return equal to 3 percent of the wages paid to each employee covered under the withholding agreement, since the targeted jobs withholding tax credit cannot exceed 3 percent.

EXAMPLE 2: Company B does not have a withholding credit under Iowa Code chapter 260E or a supplemental new jobs credit under Iowa Code chapter 15E. Company B enters into a withholding agreement, and the withholding rate for employees covered under the agreement is 2.5 percent of the wages paid. Company B will be allowed a credit on the Iowa withholding return equal to 3 percent of the wages paid to each employee covered under the withholding agreement. The extra withholding credit equal to 0.5 percent may be used to offset withholding tax for Company B's employees not covered under the withholding agreement.

EXAMPLE 3: Company C has a withholding credit under Iowa Code chapter 260E of 1.5 percent of the wages paid to new employees and a supplemental new jobs credit under Iowa Code chapter 15E of 1.5 percent of the wages paid to new employees. Company C also enters into a withholding agreement for the same employees covered under the 260E agreement and supplemental new jobs credit agreement, and the withholding rate for employees covered under these agreements is 5 percent of the wages paid. Company C will be allowed a credit on the Iowa withholding return equal to 5 percent of the wages paid to each employee covered under these agreements. Since the community college receives disbursement of the credit before the pilot project city, the community college will receive 3 percent of the wages paid to each employee covered under the agreements, and the pilot project city will receive the remaining 2 percent of the wages paid to each employee covered under the agreements.

EXAMPLE 4: Company D has a withholding credit under Iowa Code chapter 260E of 1.5 percent of the wages paid to new employees and a supplemental new jobs credit under Iowa Code chapter 15E of

1.5 percent of the wages paid to new employees. Company D also enters into a withholding agreement for the same employees covered under the 260E agreement and supplemental new jobs credit agreement, and the withholding rate for employees covered under the agreement is 2.5 percent of the wages paid. Company D will be allowed a credit on the Iowa withholding tax return equal to 6 percent of the wages paid to each employee covered under these agreements. The extra withholding credit equal to 3.5 percent may be used to offset withholding tax for Company D's employees not covered under these agreements.

46.10(1) *Notification by the employer.* Once a withholding agreement is entered into with a pilot project city, the employer shall notify the department of revenue that an agreement has been executed. With this notification, the employer must also provide its address, tax identification number and the number of new jobs created under the agreement. In addition, for each year that the withholding agreement is in place, the employer must notify the department of revenue by January 31 of the number of new jobs created as of December 31 of the preceding year.

46.10(2) *Notification by the pilot project city.* The pilot project city must notify the department of revenue on a quarterly basis of the amount of the targeted jobs withholding credit that each employer covered by a withholding agreement remitted to the city. This notification must occur within 45 days after the end of each calendar quarter. In addition, the pilot project city must notify the department of revenue immediately when a withholding agreement with an employer is terminated.

This rule is intended to implement Iowa Code Supplement section 403.19A.

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CHAPTER 47
DECLARATION OF ESTIMATED INCOME TAX BY INDIVIDUALS

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

Rescinded IAB 11/24/04, effective 12/29/04

CHAPTER 48
COMPOSITE RETURNS

701—48.1(422) Composite returns. For tax years of nonresident partners, members, shareholders, or beneficiaries which begin on or after January 1, 1987, a partnership, limited liability company, S corporation, or trust may be allowed or be required to file a composite return and pay the tax due on behalf of the nonresident partners, members, shareholders, or beneficiaries. For tax years of nonresident partners, members, shareholders, or beneficiaries which begin on or after January 1, 1999, a partnership, limited liability company, S corporation, or trust may elect or may be required to file a composite return and pay the tax due on behalf of the nonresident partners, members, shareholders, or beneficiaries. For tax years beginning on or after January 1, 1995, professional athletic teams may be allowed or be required to file a composite return and pay the tax due on behalf of nonresident team members. For tax years beginning on or after January 1, 2008, nonresident trusts or estates which are partners, members, shareholders or beneficiaries in partnerships, limited liability companies, S corporations or estates or trusts may elect or may be required to file a composite return and pay the tax due on behalf of the nonresident trusts or estates.

This rule is intended to implement Iowa Code section 422.13 as amended by 2007 Iowa Acts, House File 923, section 15.

701—48.2(422) Definitions. For the purposes of this chapter:

"Employee" means a nonresident member of a professional athletic team as defined in subrule 701—40.46(1).

"Partner" includes a member of a limited liability company which is treated as a partnership for tax purposes.

"Taxpayer" means a partnership, limited liability company, S corporation, professional athletic team, or trust which files a return and pays the tax on behalf of the nonresident partners, members, shareholders, employees, beneficiaries, estates or trusts.

"Tax year" means the tax year of the partners, shareholders, employees, beneficiaries, estates or trusts included in the composite return.

This rule is intended to implement Iowa Code section 422.13.

701—48.3(422) Filing requirements. A composite return may be allowed or required to be filed based upon the following:

1. The composite return must include all nonresident partners, shareholders, employees, or beneficiaries unless the taxpayer can demonstrate which nonresident partners, shareholders, employees, or beneficiaries are filing separate income tax returns because the partner, shareholder, employee or beneficiary has Iowa source income other than that which may be reported on a separate composite return, or has elected to file an Iowa individual income tax return. Nonresident partners, shareholders, employees, or beneficiaries shall not be included in a composite return if the nonresident has less than the minimum statutory filing amount. For example, for 2006 the minimum income from Iowa sources before a nonresident is required to file an Iowa individual income tax return is $1,000 of income attributed to Iowa sources as determined by applying the allocation and apportionment provisions of 701—Chapter 54 to the nonresident's prorated share of the entity's income. In addition, nonresident partners, shareholders, employees, or beneficiaries shall not be included in a composite return if the nonresident does not have more income from Iowa sources than the amount of one standard deduction for a single taxpayer plus an amount of income necessary to create a tax liability at the effective tax rate on the composite return sufficient to offset one personal exemption. For example, for 2006 a standard deduction for a single individual is $1,650 and at the maximum tax rate of 8.98 percent, $445 of taxable income is required to offset the $40 personal exemption. This equates to $2,095 ($445 plus $1,650) of income attributable to Iowa sources that would be required to be included in a composite return. The taxpayer must include a list of all nonresident partners, shareholders, employees, or beneficiaries who are filing separate income tax returns. The list must also include the address and social security number

or federal identification number of the nonresident partners, shareholders, employees, or beneficiaries. Filing a composite return is an election which may not be withdrawn after the due date of the return (considering any extension of time to file), but the nonresidents may, as an individual or as a group, withdraw their election at any time prior to the due date (considering any extension of time to file).

2. Income of partners, shareholders, employees, or beneficiaries whose state of residence is not known by the taxpayer must be included in the composite return.

3. Income of partners in publicly traded limited partnerships held in street names by brokers must be included in the composite return unless the taxpayer can demonstrate that the partner is an Iowa resident.

4. A taxpayer who elects to file a composite return shall continue to file composite returns unless the taxpayer notifies the department in writing that the taxpayer wishes to discontinue filing composite returns. The notice shall be filed with the Iowa Department of Revenue, Examination Section, Compliance Division, P.O. Box 10456, Des Moines, Iowa 50306, before the due date of the return for the tax year for which the change in filing is to be made.

A taxpayer who was required to file a composite return for the immediately preceding taxable year is required to file a composite return unless permission is given to discontinue filing a composite return.

5. Each nonresident partner, shareholder, employee, or beneficiary whose income is included in the composite return must have the same tax year, which must be the tax year of the majority of the nonresident partners, shareholders, employees, or beneficiaries. Those nonresident partners, shareholders, employees, or beneficiaries who are not included in the composite return must file separate individual income tax returns.

This rule is intended to implement Iowa Code section 422.13.

701—48.4(422) When the application for permission to file a composite return must be filed. Rescinded IAB 11/7/07, effective 12/12/07.

701—48.5(422) The director may in accordance with rule 701—48.3(422) require the filing of a composite return under the following conditions.

1. The director may require the filing of a composite return if the nonresident partners, shareholders, or beneficiaries do not file individual income tax returns and pay the tax due.

2. Where some of the nonresident partners, shareholders, or beneficiaries file individual income tax returns and pay the tax due, but other nonresident partners, shareholders, or beneficiaries do not file individual returns, the director may require a composite return which includes the Iowa taxable income of those nonresident partners, shareholders, or beneficiaries who did not file individual returns.

This rule is intended to implement Iowa Code section 422.13.

701—48.6(422) Determination of composite Iowa income. Because a composite return is filed on behalf of the nonresident partners, shareholders, employees, or beneficiaries, it must be based upon the tax year of the majority of its partners, shareholders, employees, or beneficiaries. The composite return must be filed on Form IA 1040C, "Composite Iowa Individual Income Tax Return." Attach schedules as necessary to explain the return. For the purposes of this rule, federal income means federal ordinary income (loss) from trade or business activities plus those items of income which flow through separately less expense items which flow through separately to the partners, shareholders, or beneficiaries joining in the filing of a composite return.

1. Adjustments to federal income. For partnerships and trusts, make those adjustments to federal income set forth in Iowa Code section 422.7. For S corporations, make those adjustments to federal income set forth in Iowa Code section 422.35.

2. Apply the allocation and apportionment provisions of 701—Chapter 54 or rule 701—40.46(422) for allocation of compensation paid to nonresident employees of professional athletic teams.

3. Deduct one standard deduction equal to the amount allowed a single taxpayer, not to exceed the amount of income attributable to Iowa, for each nonresident partner, shareholder, employee, or beneficiary included in the composite return.

4. For tax years beginning on or after January 1, 1989, deduct an amount in lieu of a federal tax deduction based upon the following schedule.

0	—	$ 49,999	No deduction
$ 50,000	—	$ 99,999	5% of net income attributable to Iowa
$100,000	—	$199,999	10% of net income attributable to Iowa
$200,000		and over	15% of net income attributable to Iowa

5. A net operating loss carryback or carryforward is allowed. See 701—subrule 40.18(3). In lieu of a net operating loss carryback, the taxpayer may elect to carry the loss forward.

This rule is intended to implement Iowa Code section 422.13.

701—48.7(422) Determination of composite Iowa tax.

48.7(1) The tax will be computed in accordance with Iowa Code section 422.5, including the alternative minimum tax as though a resident.

48.7(2) Deduct from the computed tax one personal exemption credit of $20 for each nonresident partner, shareholder, employee, or beneficiary included in the composite return.

EXAMPLE: For tax year 1991, X corporation is an S corporation, all of whose shareholders but one are nonresidents who have elected to join in the filing of a composite return. The three electing shareholders' share of income or loss is 87 percent of the corporation's total income. The S corporation's net income is $800,000, and income items totaling $6,000 and expenses of $500,000 flow directly to the shareholders. The corporation has 25 percent of its sales with an Iowa destination. The corporation has tax preferences and adjustments of $475,000. The composite tax liability would be computed as follows:

Net income attributable to electing shareholders $800,000 × 87%	$696,000
Add: electing shareholders' share of income items which flow separately to shareholders $6,000 × 87%	5,220
Less: electing shareholders' share of expenses which flow separately to shareholders $500,000 × 87%	<435,000>
Income attributable to electing shareholders	$266,220
Times the Iowa business activity ratio	25%
Net income attributable to Iowa	$ 66,555
Less: one standard deduction per shareholder 3 × $1,280	< 3,840>
Federal tax deduction $66,555 × 5%	< 3,328>
Iowa taxable income	$ 59,387
Computed tax	$ 4,515

Less: one personal exemption credit per shareholder 3 × $20	< 60>
Iowa tax	$ 4,455

The alternative minimum tax would be computed as follows:

Iowa taxable income	$ 59,387
Add: tax preferences and adjustments attributable to electing shareholders times Iowa activity ratio $475,000 × 87% × 25%	103,313
	$162,700
Less: exemption	35,000
Minimum taxable income	$127,700
times minimum tax rate 7.5%	× .075
Computed minimum tax	$ 9,578
Less regular tax	< 4,455>
Minimum tax liability	$ 5,123

This rule is intended to implement Iowa Code section 422.13.

701—48.8(422) Estimated tax. Taxpayers filing composite returns are not required to make payments of estimated tax. However, if taxpayers desire to make estimated payments, the estimated payments should be made on Form IA 1040ES using the partnership's, S corporation's, or trust's identification number assigned by the department in lieu of the social security number.

This rule is intended to implement Iowa Code section 422.13.

701—48.9(422) Time and place for filing.

48.9(1) A composite return of income must be filed on or before the due date. The due date is the last day of the fourth month following the close of the taxpayer's taxable year, or the last day of the period covered by an extension of time granted by the department. When the due date falls on a Saturday, Sunday, or legal holiday, the composite return is due the first business day following the Saturday, Sunday, or legal holiday. If a return is placed in the mail, properly addressed, postage paid, and postmarked on or before the due date for filing, no penalty will attach should the return not be received until after that date. Mailed returns should be addressed to Composite Return Processing, Department of Revenue, P.O. Box 10469, Des Moines, Iowa 50306.

48.9(2) Extension of time for filing composite returns. If the taxpayer has paid at least 90 percent of the tax required to be shown due by the due date and has not filed a return by the due date, the director will consider that the taxpayer has requested an extension of time to file the return and will automatically grant an extension of up to six months to file the return. The taxpayer does not have to file an application for extension form with the department to get the automatic extension to file the return within the six-month period after the due date and not be subject to penalty. However, if the taxpayer wants to make a tax payment to ensure that at least 90 percent of the tax has been paid on or before the due date, the payment

should be made with the Iowa Tax Voucher form. This form can be requested from the Taxpayer Services Section, P.O. Box 10457, Des Moines, Iowa 50306, or by telephone at (515)281-3114.

To determine whether or not at least 90 percent of the tax was "paid" on or before the due date, the aggregate amount of tax credits applicable on the return, plus the tax payments made on or before the due date, are divided by the tax required to be shown due on the return. The tax required to be shown on the return is the sum of the income tax and minimum tax. The tax credits applicable are the credits set out in Iowa Code chapter 422, division II, and section 422.111.

If the aggregate of the tax credits and the tax payments are equal to or greater than 90 percent of the tax required to be shown due, the taxpayer will have met the "90 percent" test and no penalty will be assessed. However, the taxpayer will still be subject to statutory interest on any tax due when the return is filed.

Any tax elections, such as the election to carry forward a net operating loss occurring in the tax year, will be considered to be valid in instances when the return is filed within the six-month extended period after the due date. The fact that the taxpayer has paid less than 90 percent of the tax required to be shown due will not invalidate any tax elections made on the return, if the return is filed within the six-month extended period.

48.9(3) Rescinded IAB 2/1/95, effective 3/8/95.

This rule is intended to implement Iowa Code section 422.13.

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CHAPTER 49
ESTIMATED INCOME TAX FOR INDIVIDUALS
[Prior to 12/17/86, Revenue Department [730]]

701—49.1(422) Who must pay estimated income tax.

49.1(1) *General rule.* For tax years beginning on or after January 1, 1990, estimated payments are required if the taxpayer's income tax liability attributable to incomes not subject to withholding is expected to be $200 or more. The amount of estimated tax paid must be used as a credit on the taxpayer's individual income tax return.

49.1(2) *Joint estimate payments by married taxpayers.* A husband and wife may make a joint estimate tax payment on one form as if they were one taxpayer. If a joint estimate payment is made, but the husband and wife elect to file separate returns or separately on the combined return form, the estimate tax paid for the tax year by the husband and wife may be allocated between the spouses on their returns as the taxpayers choose.

49.1(3) *Separate estimate tax payments by married taxpayers.* A husband and wife may each make separate estimate payments. If separate estimate payments are made by married taxpayers, each spouse is to claim only the estimate payments made by that spouse.

49.1(4) *Examples of types of taxpayers who may be required to make estimate payments.* Listed below are examples of various types of taxpayers who may be required to make estimated tax payments. The list is for illustrative purposes and is not deemed to be all-inclusive.

1. *Self-employed.* An individual having taxable income from a trade or business where the individual has control of the work, the services rendered, and the fees and charges for services rendered or merchandise sold.
2. *Retiree.* An individual receiving pensions, annuities, and social security benefits or other incomes not subject to withholding after the taxpayer has withdrawn from active employment.
3. *Farmers and fishers.* Individuals deriving at least two-thirds of yearly income from farming or fishing activities.
4. *Nonresident.* Any individual who resides out of state and receives taxable income from an Iowa source which is not subject to withholding.
5. *Beneficiaries of estates and trusts.* Any resident or nonresident individual who is the recipient of income from an estate or trust from an Iowa source.
6. *Taxpayers with income in addition to wages.* An individual drawing salary or wages subject to withholding tax, having additional taxable income from an Iowa source which is not subject to withholding, such as interest, dividends, capital gains, rents, royalties, business income, or farm income.
7. *Agricultural worker.* Any worker receiving a wage or salary for agricultural labor which is excluded by law for withholding tax purposes.

This rule is intended to implement Iowa Code section 422.16.

701—49.2(422) Time for filing and payment of tax.

49.2(1) *Time for filing.*

a. General rule. The date for filing the first estimate tax payment is on or before the last day of the fourth month of the tax year. The estimate tax form is to be sent to: Estimate Processing, Iowa Department of Revenue, P.O. Box 10466, Des Moines, Iowa 50306.

b. Special rule for farmers and fishers. If the estimated gross income of a taxpayer from farming or fishing is at least two-thirds of the estimated gross income from all sources for the taxable year, one of the following three methods is available to the taxpayer for satisfying the requirement to make estimate tax payments.

(1) Make the first estimate payment on April 30 and make the other three payments by the dates specified under subrule 49.2(2).

(2) Make the entire estimate payment for the tax year by January 15 of the subsequent tax year and file the individual income tax return by April 30 of the subsequent tax year.

(3) File the individual income tax return and pay the tax in full on or before March 1 of the subsequent tax year.

c. Amended estimate payments.

(1) *General rule.* Whenever a taxpayer who is required to make estimate payments has reason to believe that the anticipated income tax liability on which the estimate payments are based has increased or decreased, any subsequent estimate payments should be amended or adjusted accordingly.

(2) *Example.* A married couple is making joint estimate tax payments on a calendar year basis, anticipating taxable income of $8,500, with an estimated tax liability of $300. The taxpayers paid the first quarter installment of $75 by the due date of April 30 of the current year and the second installment of $75 on June 30. On July 15, real estate owned jointly by the taxpayers is sold, creating additional taxable income for the year of $7,500. The new tax liability for the tax year is $900 less the estimate payments of $150 already paid for the first and second quarters. There is a balance of $750 to be paid in two equal installments of $375 each by September 30 of the current year and by January 31 of the succeeding year.

49.2(2) *Payment of estimated tax.*

a. General rule. Estimated tax due for the tax year may be paid in full on the date on which the first payment is due or in four equal installments. The taxpayer may elect to pay any installment prior to the date when the installment is due.

b. Calendar-year installments. The first estimate tax payment is due by April 30. The other installments shall be paid on or before June 30 and September 30 of the current year, and on or before January 31 of the succeeding year.

c. Fiscal-year installments. The installment dates for a taxpayer filing estimate tax payments on a fiscal-year basis are:

Installment No. 1. The last day of the fourth month of the fiscal year.

Installment No. 2. The last day of the sixth month of the fiscal year.

Installment No. 3. The last day of the ninth month of the fiscal year.

Installment No. 4. The last day of the first month of the next fiscal year.

This rule is intended to implement Iowa Code section 422.16.

701—49.3(422) Estimated tax for nonresidents.

49.3(1) *General rule.* Except as noted in 49.3(2), payers of Iowa income to nonresidents of Iowa are required to withhold Iowa income tax and to remit the tax to the department. See rule 701—46.4(422) for withholding on payments to nonresidents.

49.3(2) *Estimate payments in lieu of withholding.* Nonresidents who prefer to pay estimated tax in lieu of having state income tax withheld by a state withholding agent must obtain a certificate or release from withholding. The nonresident estimated tax form must be accompanied by full payment and must include a list of the name(s) and address(es) of any tenant or farm manager, or cooperative elevator, or other Iowa agent or payer from which the taxpayer anticipates receiving income. The total gross income anticipated for the year must also be shown on the nonresident estimated tax form.

After the department's receipt of and approval of the completed nonresident estimate tax form with the full payment of the tax shown due on the form, the certificate of release from withholding will be forwarded to the withholding agent or payer designated on the form. Since the nonresident estimate form is filed for the purpose of obtaining a release from withholding, the form must be filed prior to the time of the transactions which would subject the taxpayer to the state withholding tax requirements. The nonresident estimate tax form and payment should be mailed to Estimate Processing, Iowa Department of Revenue, P.O. Box 10466, Des Moines, Iowa 50306.

49.3(3) *Example.* Nonresident estimated tax payments may be illustrated with the following example:

A nonresident individual owns a farm in Iowa which is operated by a farm manager. For tax purposes the farm manager is considered to be the Iowa withholding agent when distributing proceeds from the farm to the nonresident. A crop is sold through the local farm cooperative elevator and a check is issued to the farm manager, who then sends the check to the nonresident. Before doing so, Iowa income taxes

must be withheld from the gross proceeds and remitted to the Iowa department of revenue for deposit and credit to the income tax liability of the nonresident, unless the farm manager has possession of a certificate of release from withholding issued by the department of revenue. In the event that the farm cooperative elevator sends the check for payment of the crops directly to the nonresident, the cooperative becomes the withholding agent.

49.3(4) *Election by withholding agents to make estimated payments on behalf of nonresident taxpayers with net incomes from agricultural commodities or products.* Effective for tax years beginning on or after January 1, 1989, withholding agents such as farm management companies can elect to make estimate tax payments on behalf of nonresidents for net incomes that the nonresidents will have for the tax year from sales of agricultural commodities or products. If the withholding agent elects to make the estimate tax payments for the nonresident taxpayers, the estimate tax payments should be submitted to the department of revenue on or before the last day of the first month after the end of the tax year of the nonresidents. The estimate payments should be sent with Form IA 1040ES (45-002) and mailed to: Estimate Processing, Iowa Department of Revenue, P.O. Box 10466, Des Moines, Iowa 50306. Net income from agricultural commodities or products means net incomes from those agricultural commodities or products described in paragraph *"a"* of 701—subrule 46.4(6). If the estimate tax payments made on behalf of the nonresident taxpayers by the withholding agents are not sufficient to pay the Iowa income taxes on the net incomes of the nonresidents from the agricultural commodities or products, the nonresidents may be subject to penalties for underpayment of estimated taxes.

This rule is intended to implement Iowa Code sections 422.16 and 422.17.

701—49.4(422) Special estimated tax periods.

49.4(1) *Short taxable year.* A taxpayer having a taxable year of less than 12 months must make estimated tax payments if anticipating an Iowa tax liability of $50 or more for that short tax year if that tax year began prior to January 1, 1990. In the case of short tax years beginning on or after January 1, 1990, taxpayers would be required to make estimated payments if their anticipated Iowa tax liabilities were $200 or more from incomes not subject to withholding.

49.4(2) *Part-year resident.*

a. General rule. Part-year residents moving into or out of the state must determine their Iowa estimated tax on the ratio of income from Iowa sources not subject to withholding tax to incomes from all sources.

b. Example. An individual moving into the state on April 15, having taxable income from an Iowa source which is not subject to withholding and an expected tax liability of $150, must make the first estimate payment of $50 by June 30 and pay the remaining balance of $100 in two equal installments of $50 each by September 30 and by January 31 of the succeeding year if the tax year for which the estimate payments were made began prior to January 1, 1990. A similar procedure for making estimate payments would be followed for tax years beginning on or after January 1, 1990, when no estimate payments would be required unless the anticipated state income tax liability for the balance of the tax year would be $200 or more.

This rule is intended to implement Iowa Code section 422.16.

701—49.5(422) Reporting forms.

49.5(1) *Resident forms.* Resident taxpayers who have filed a prior year estimate tax form will receive by mail a preaddressed estimate tax reporting form. Blank estimate tax forms are available from the department for those individuals making state estimate payments for the first time or when the preaddressed form is misplaced or lost.

49.5(2) *Nonresident forms.* A special nonresident estimate tax form with instructions is available from the department for any nonresident wishing to make estimate tax payments in lieu of having Iowa income tax withheld by an Iowa withholding agent. The estimated payment should be submitted with the certificate or the release from withholding described in subrule 49.3(2).

This rule is intended to implement Iowa Code section 422.16.

701—49.6(422) Penalty—underpayment of estimated tax. The civil penalty provided by the Internal Revenue Code for underpayment of federal estimated tax also applies to persons required to make payments of estimated tax under provisions of the Iowa Code. The Iowa penalty for underpayment of estimated tax is computed on Form IA 2210 for individual taxpayers other than farmers and fishers and Form IA 2210F for individuals who have two-thirds of their gross annual incomes from farming or fishing activities.

49.6(1) *Exceptions which may avoid the underpayment penalty.* The following are the two exceptions under which taxpayers may avoid the penalty for underpayment of estimated tax:

a. Current year payments equal or exceed prior year's liability. Taxpayers may avoid the penalty for underpayment of estimated tax if the estimated tax payments and other tax payments for the current tax year, such as withholding tax, are equal to or exceed the tax liability for the prior tax year. The prior tax year must cover a 12-month period and there must have been a tax liability on the return for the prior year. For tax years beginning on or after January 1, 1987, the requirement that the return for the prior tax year must have had a tax liability is eliminated although the return must have covered a 12-month period.

b. Current year payments equal or exceed 80 percent, or 90 percent for tax years beginning on or after January 1, 1987, of the tax on the taxpayer's annualized income. Taxpayers may also avoid the penalty for underpayment of estimated tax, if their tax payments for the tax year are equal to or exceed 80 percent of the tax on the taxpayer's annualized income for periods from the first of the tax year to the end of the month preceding the month in which an installment of estimated tax is due. For tax years beginning on or after January 1, 1987, taxpayers may avoid the penalty for underpayment of estimated tax if their tax payments for the tax year are equal to or exceed 90 percent of the tax on the taxpayer's annualized income.

49.6(2) *Waiver of penalty for underpayment of estimated tax.* The following are two situations under which the penalty for underpayment of estimated tax may be waived for tax years beginning on or after January 1, 1986:

a. The underpayment was due to casualty, disaster, or other unusual circumstances and imposition of the penalty would be against equity and good conscience.

b. The underpayment was made by an individual who retired after having attained age 62, or who became disabled in the tax year for which the estimated payment was due or in the preceding tax year, and the underpayment was due to reasonable cause and not due to willful neglect.

49.6(3) *Special provision for penalty for underpayment of estimated tax for tax years beginning on or after January 1, 1987, but before January 1, 1988.* Rescinded IAB 11/24/04, effective 12/29/04.

This rule is intended to implement Iowa Code section 422.16.

701—49.7(422) Estimated tax carryforwards and how the carryforward amounts are affected under different circumstances. For tax years beginning on or after January 1, 1994, taxpayers that timely file their Iowa returns and have overpayments shown on their returns may elect to have the overpayments credited to their estimated tax payments for the following tax year.

For purposes of this rule, filing a return for a calendar-year period on or before the last day of the year in which the return is due will constitute timely filing of that return for purposes of being eligible to have an overpayment from that return applied to the estimated tax payments for the next tax year. The 1994 Iowa return is due on May 1, 1995, because the regular due date of April 30 falls on Sunday. Therefore, if a taxpayer files the 1994 return on or before December 31, 1995, showing an overpayment on the return, the taxpayer can elect to have the overpayment credited to the taxpayer's estimated tax for the 1995 calendar year.

However, if a taxpayer files the 1994 return anytime after the end of the 1995 calendar year with an overpayment shown on the return, the overpayment will be refunded to the taxpayer notwithstanding that the taxpayer has shown that the overpayment is to be credited to estimated tax for 1995.

EXAMPLE 1. Mark Jones filed his 1994 return on October 31, 1995, showing an overpayment of $400, and a credit to 1995 estimated tax for $400. Because the 1994 return was filed on or before December 31, 1995, Mr. Jones' election to credit the $400 overpayment to 1995 estimated tax was honored.

EXAMPLE 2. Fred Mack filed his 1994 and 1995 Iowa returns in March 1996. The 1994 return showed an overpayment of $300 and credit to 1995 estimated tax of $300. The 1995 return showed an overpayment of $200 which was determined from estimated payments of $800, including the $300 credit from the 1994 return. The overpayment from the 1994 return was to be refunded because the taxpayer had filed that return after the deadline for crediting overpayments to estimated payments for 1994 returns. Because the $300 credit to 1995 estimated tax was not allowed, there was tax due of $100 on the 1995 return. The tax due for 1995 was satisfied with part of the refund from the 1994 return.

The following subrules show how the amounts of tax carryforwards from overpayments shown on state returns are affected by certain circumstances:

49.7(1) *Estimated tax carryforward and how amount of carryover credit is affected by error on return.* If a state return is filed timely with an overpayment shown on the return and the overpayment is to be credited to the taxpayer's estimated payments for the following year, the amount credited to estimated payments will be affected by an error on the return. Thus, if the error on the return is corrected and results in a smaller overpayment than was shown when the return was filed, the credit to estimated tax from the return will be reduced accordingly.

EXAMPLE. Mike Green filed his 1994 return on March 20, 1995, showing an overpayment of $400 and a credit to 1995 estimated tax of $400. During processing of the return, it was determined that the federal income tax refund received was subtracted from net income instead of being added to net income. Correction of this error resulted in an overpayment of $200 instead of $400. Thus, the amount credited to the taxpayer's estimated payments for 1995 was $200 instead of the $400 shown on the return form. The department notified Mr. Green of the error and advised him that only $200 was being credited to the taxpayer's estimated tax for 1995 instead of the $400 shown on the return.

49.7(2) *Estimated tax credit carryover, carryforward amount affected by amended return.* A taxpayer files an original return timely with an overpayment and with the overpayment credited to the following year's estimated tax payments. If the taxpayer files an amended return correcting an error on the original return and with a different amount credited to estimated tax than on the original return, the credit amount from the amended return will be credited to estimated tax, if the amended return is filed on or before the end of the year in which the return is due. Thus, if an amended 1994 return is filed by December 31, 1995, the amount shown as a credit to estimated tax from that amended return will be the amount credited to the taxpayer's 1995 estimated tax, instead of the amount credited from the original 1994 return.

EXAMPLE. Velma Fox filed her original 1994 return on April 15, 1995, with an overpayment of $500 and all of that overpayment credited to her estimated tax for 1995. Later, in 1995, Ms. Fox determined that she had failed to claim a deduction on the return for depreciation on some business equipment she acquired in 1994. Therefore, she filed an amended 1994 Iowa return on October 31,1995, showing an overpayment of $700 and a credit to 1995 estimated tax of the same amount. Ms. Fox's amended return was filed on or before December 31, 1995, so the $700 credit to Ms. Fox's 1995 estimated tax from the amended return was allowed.

Note that if the amended return had not been filed until sometime in January 1996, the credit from Ms. Fox's original return would have been applied to Ms. Fox's estimated payments for 1995. Since the amended return would have been filed too late for purposes of crediting the overpayment to the taxpayer's estimated tax for the next year, the department would issue Ms. Fox a refund of $200 which is the portion of the overpayment from the amended return that had not been credited to estimated tax from the original return for 1994.

49.7(3) *Estimated tax carryforward and how amount of carryover credit is affected by state tax liability or other state liability of the taxpayer.* A taxpayer who files an Iowa return with an overpayment shown on the return and elects to have the overpayment credited to the taxpayer's estimated tax for the next tax year will not have the overpayment credited to estimated tax if the taxpayer has tax liabilities or other liabilities with the state that are subject to setoff. Other liabilities with the state that are subject to setoff are those liabilities described in Iowa Code section 8A.504. These liabilities are for debts owed the state for public assistance overpayments, defaults on guaranteed student or parental college

loans, district court debts, delinquent child support, and any other debts of the taxpayer with a board, commission, department, or other administrative office or unit of the state of Iowa.

EXAMPLE 1. Rose Peters filed her 1994 Iowa return in April 1995 showing an overpayment of $400 and a credit to 1995 estimated tax of $400. During processing of Rose's 1994 return it was determined that she had a liability of $150 from her 1993 Iowa return. Thus, $150 of the 1994 overpayment was offset against the tax liability from the 1993 return. The remaining portion of the 1994 overpayment of $250 was credited to Ms. Peters' estimated tax for 1995.

EXAMPLE 2. Mike Moore filed his 1994 Iowa return in May 1995 with an overpayment of $500, a credit to 1995 estimated tax of $300 and a refund of $200. Mr. Moore is a "self-employed individual" as that phrase is to be understood for the purposes of Iowa Code section 252B.5, subsection 8, as amended by 2003 Iowa Acts, House File 534, section 220. During processing it was determined that Mr. Moore had a liability for unpaid child support of $1,000. After Mr. Moore was notified by the child support recovery unit of the department of human services that the overpayment from the 1994 return was going to be applied to the child support liability, the entire overpayment of $500 was set off against Mr. Moore's liability for unpaid child support. Thus, since the $300 credit to estimated tax was set off against the delinquent child support, there was no credit to estimated tax for 1995. Responsibility for offsetting this type of obligation remains, as of July 1, 2003, with the department of revenue and has not been transferred to the department of administrative services.

This rule is intended to implement Iowa Code section 421.17, subsections 21A and 21B, and section 422.16.

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CHAPTER 50
APPORTIONMENT OF INCOME FOR RESIDENT SHAREHOLDERS OF S CORPORATIONS

701—50.1(422) Apportionment of income for resident shareholders of S corporations. For tax years beginning on or after January 1, 1996, and before January 1, 1998, resident shareholders of S corporations which are value-added corporations and which carry on business within and without Iowa may, at their election, determine the S corporation income allocable to sources within Iowa by allocation and apportionment of the S corporation income. For tax years beginning on or after January 1, 1998, resident shareholders of all S corporations which carry on business within and without Iowa may, at their election, determine the S corporation income allocable to sources within Iowa by allocation and apportionment of the S corporation income. For tax years beginning on or after January 1, 1996, and before January 1, 1997, in order to take advantage of this provision, the taxpayers must first file their return reporting all income to Iowa and then file a refund claim based on allocation and apportionment. Esatates and trusts which are shareholders in S corporations cannot take advantage of these apportionment provisions.

For tax years beginning on or after January 1, 1997, a shareholder in an S corporation which carries on business within and without Iowa which has elected to apportion income and then elects not to apportion income shall not reelect to apportion income for three tax years immediately following the first tax year in which the shareholder elected not to apportion income, unless the director of revenue consents to the election.

This rule is intended to implement Iowa Code section 422.5, subsection 1, paragraph *"j."*

701—50.2(422) Definitions. For purposes of this chapter the following definitions apply:

"Carrying on business within and without the state." See subrule 54.1(4) for a definition of this term.

"Value-added corporation" means a corporation that purchases, receives, or holds personal property of any description, and which adds to its value by a process of manufacturing, construction, processing, or combining of different materials, and shall specifically include the economic activity identified in the major groups of standard industrial classifications below, with a view to selling the finished product for gain or profit.

DIVISION C—CONSTRUCTION

Major Group 15—Building construction—General contractors and operative builders.

Major Group 16—Heavy construction other than building construction—Contractors.

Major Group 17—Construction special trade contractors.

DIVISION D—MANUFACTURING

Major Group 20—Food and kindred products.

Major Group 21—Tobacco products.

Major Group 22—Textile.

Major Group 23—Apparel and other finished products made from fabrics and similar materials.

Major Group 24—Lumber and wood products except furniture.

Major Group 25—Furniture and fixtures.

Major Group 26—Paper and allied products.

Major Group 27—Printing, publishing, and allied industries.

Major Group 28—Chemicals and allied products.

Major Group 29—Petroleum refining and related industries.

Major Group 30—Rubber and miscellaneous plastics products.

Major Group 31—Leather and leather products.

Major Group 32—Stone, clay, glass, and concrete products.

Major Group 33—Primary metal industries.

Major Group 34—Fabricated metal products, except machinery and transportation equipment.

Major Group 35—Industrial and commercial machinery and computer equipment.

Major Group 36—Electronic and other electrical equipment and components, except computer equipment.

Major Group 37—Transportation equipment.

Major Group 38—Measuring, analyzing, and controlling instruments: photographic, medical, optical goods, watches and clocks.

Major Group 39—Miscellaneous manufacturing industries.

A corporation engaged in more than one business activity is a value-added corporation if more than 50 percent of its gross receipts, figured on a three-year average, or such shorter period as the corporation shall have been in existence, are from manufacturing, construction, processing, or combining of different materials and include the processes identified above.

This rule is intended to implement Iowa Code section 422.4.

701—50.3(422) Distributions. Distributions from income not previously taxed by Iowa include the amount of all cash distributions and the fair market value of all property distributions made during the year, except as follows:

1. Distributions from income not subject to Iowa tax due to exclusion under Iowa Code section 422.7 (i.e., interest from federal securities or certain securities issued by Iowa). For purposes hereof, all distributions for a year shall be deemed to be made proportionally from income subject to Iowa tax and from income not subject to Iowa tax. Distributions from income apportioned outside of Iowa shall not be deemed to be made from income not subject to Iowa tax.

2. Distributions from income previously taxed by Iowa for a year in which the S corporation was a C corporation and which is taxed as a dividend or capital gain for federal income tax purposes.

3. Distributions from income previously taxed by Iowa for a year prior to the first tax year the resident shareholder elected to apportion income within and without Iowa.

4. Distributions treated as a return of capital for federal income tax purposes for tax years beginning prior to January 1, 2004.

5. For tax years beginning on or after January 1, 2004, any distributions paid from income for which the taxpayer can prove that Iowa tax has been previously paid. Any distributions paid from income apportioned outside of Iowa for tax years in which the resident shareholder elected to apportion income within and without Iowa will be considered distributions for which Iowa tax has not been previously paid, and cannot be excluded for purposes of this rule.

For purposes of this rule, a distribution is taken into account on the date the corporation makes the distribution, regardless of when the distribution is treated as received by the shareholder. Distributions shall first be deemed made from current year income of the S corporation to the extent thereof. If distributions during a year exceed the current income of the S corporation, any excess distributions shall be considered made first from the immediately preceding year income of the S corporation, and then to each preceding year income of the S corporation in reverse chronological order, and then in accordance with the ordering rules set forth in Section 1368 of the Internal Revenue Code and the regulations thereunder.

EXAMPLE: An S corporation earned income of $20,000 in 2002, income of $30,000 in 2003 and income of $40,000 in 2004. The S corporation made no distributions during 2002 and 2003 and made distributions of $75,000 during 2004. The distributions will come first from the $40,000 income earned in 2004. The excess distributions of $35,000 will come first from the $30,000 income earned during 2003, and the remaining $5,000 will come from the income earned during 2002.

This rule is intended to implement Iowa Code section 422.8, subsection 2.

701—50.4(422) Computation of net S corporation income. After making the adjustments in Iowa Code section 422.35, net S corporation income is computed by adding to or subtracting from the S corporation's ordinary income (loss) from a trade or business those items of income, losses, and expenses that flow directly to the shareholder whose separate treatment could affect the tax liability of the shareholder. In computing the amounts of income, losses, and expenses that flow directly to the shareholder, these items of income, losses, and expenses, except for interest exempt from federal

income tax and itemized deductions for high-income individuals, must be reduced proportionately to the amount that the sum of all like amounts of income, losses, and expenses are reduced for federal income tax computations.

This rule is intended to implement Iowa Code section 422.8, subsection 2, as amended by 1996 Iowa Acts, chapter 1197.

701—50.5(422) Computation of federal tax on S corporation income. The amount of federal income tax related to the items of income, losses, and expenses from an S corporation is to be computed by dividing the sum of the items of income, losses, and expenses by federal adjusted gross income, and the result multiplied by the sum of the federal income tax and the federal alternative minimum tax. This resulting tax figure is to be reduced by the nonrefundable federal tax credits relating to the S corporation income which are a reduction in tax rather than a payment of tax. Credits that are deemed to be a payment of tax include, but are not limited to, backup withholding on interest, dividends and other types of income, and credit for motor vehicle fuel taxes.

For tax periods beginning prior to January 1, 2002, the distribution received from the S corporation is reduced by 50 percent of the federal tax paid by the shareholder on the S corporation income. For tax periods beginning on or after January 1, 2002, the distribution received from the S corporation is reduced by 100 percent of the federal tax paid by the shareholder on the S corporation income.

This rule is intended to implement Iowa Code section 422.8, subsection 2, as amended by 2002 Iowa Acts, House File 2078.

701—50.6(422) Income allocable to Iowa. In order to determine the amount of income allocable to Iowa from an electing S corporation, apply the allocation and apportionment rules in 701—Chapter 54.

This rule is intended to implement Iowa Code section 422.8, subsection 2, as amended by 1996 Iowa Acts, chapter 1197.

701—50.7(422) Credit for taxes paid to another state. If a taxpayer elects to take advantage of the apportionment provisions for a resident shareholder of an S corporation, then the taxpayer may not take a credit against Iowa income tax for income taxes or taxes measured by income paid to another state or foreign country on the S corporation income.

This rule is intended to implement Iowa Code section 422.8.

701—50.8(422) Refunds. For tax years beginning on or after January 1, 1997, and before January 1, 1998, in order to elect to take advantage of the apportionment provisions for resident shareholders in an S corporation, the shareholder must file an individual income tax return reporting income and pay the tax including the alternative minimum tax as though the apportionment provision is not available and then file a claim for refund on Form 41-134, "IA 134 S Corporation Apportionment Refund." The claim for refund must be attached to the resident shareholder's individual income tax return and must be filed within ten months after the end of the resident shareholder's tax year. If the refund claim is not filed with the department within ten months of the end of the resident shareholder's tax year, no refund will be made.

Total refunds for a tax year may not exceed $5 million.

In the case the refund claims are not paid in full, the amount of the refund to which the taxpayer is entitled is the pro-rata amount. The taxpayer is not entitled to a refund of the unpaid portion and the unpaid amount may not be carried forward or backward to another tax year.

The taxpayer may not use the refund as estimated tax payments for the succeeding tax year.

This rule is intended to implement Iowa Code section 422.5, subsection 1, paragraph *"j,"* as amended by 1997 Iowa Acts, House File 306.

701—50.9(422) Examples for tax periods beginning prior to January 1, 2002.

EXAMPLE 1. The following example is based on the following facts. The taxpayers are a husband and wife who have two dependent children. Their income consists of husband's wages of $50,000; rental loss ($5,000); wife's S corporation income of $500,000; joint interest income of $35,000. They

have Iowa itemized deductions of $20,000, and an out-of-state tax credit of $1,150 on the S corporation income. The actual cash distribution from the S corporation was $289,840, none of which has been previously taxed by Iowa. Federal income tax paid during the year totals $191,214. The S corporation is a value-added corporation which carries on business within and without Iowa with 10 percent of its sales in Iowa.

a. Computation of tax on a joint return basis.

Wages	$50,000
S corporation income	500,000
Interest	35,000
Rent	(5,000)
Total income	$580,000
Less federal tax deduction	(191,214)
Subtotal	$388,786
Less itemized deductions	(20,000)
Taxable income	$368,786
Tax	$35,378
Less personal credits husband & wife & two dependents	(120)
Subtotal	$35,258
Less out-of-state tax credit	(1,150)
Iowa individual tax	$34,108

Computation of refund

Total income	$580,000
Less S corporation income	(500,000)
Subtotal	$80,000
Add the greater of cash distributions not previously taxed, $289,840 less 50% federal taxes on S corporation income of $82,420 = $207,420, or income attributable to Iowa sources $50,000	207,420
Income attributable to Iowa sources	$287,420
Total income	$580,000
Taxable percentage	49.5552%
Iowa individual tax before credit	$35,258
Credit percentage	50.4448%
Subtotal	$17,786
Less out-of-state tax credit	(1,150)
S corporation tax credit	$16,636
Amount of refund	$16,636

Computation of 50 percent of federal income tax attributable to S corporation income: 50% × $191,214 × $500,000 / $580,000 = 50% × $164,840 = $82,420.

Computation of percent of income attributable to Iowa sources: 100 × $287,420 / $580,000 = 49.5552%.

Computation of percent income attributable to non-Iowa sources: 100 - 49.5552% = 50.4448%.

b. Computation on a separate filing on a combined return basis.

	Spouse	Taxpayer
Wages	$50,000	-0-
S corporation income	-0-	$500,000
Interest	17,500	17,500
Rent	(5,000)	-0-
Total income	$62,500	$517,500
Less federal tax deduction	(20,613)	(170,601)
Subtotal	$41,887	$346,899
Less itemized deductions	(2,156)	(17,844)
Taxable income	$39,731	$329,055
Tax	$2,638	$31,410
Less personal credits taxpayer & spouse & two dependents	(100)	(20)
Subtotal	$2,538	$31,390
Less out-of-state tax credit	(-0-)	(1,150)
Iowa individual tax	$2,538	$30,240
Computation of refund		
Total income		$517,500
Less S corporation income		(500,000)
Subtotal		$17,500
Add the greater of cash distributions not previously taxed $289,840 less 50% of federal taxes on S corporation income of $82,420 = $207,420, or income attributable to Iowa sources $50,000		207,420
Income attributable to Iowa sources		$224,920
Total income		$517,500
Taxable percentage		43.4628%
Iowa individual tax before credit		$31,390
Credit percentage		56.5372%
Subtotal		$17,747
Less out-of-state tax credit		(1,150)
S corporation tax credit		$16,597
Amount of refund		$16,597

Taxpayer's computation of 50 percent of federal income tax attributable to S corporation income: 50% × $170,601 × $500,000 / $517,500 = 50% × $164,832 = $82,416.

Taxpayer's computation of percent of income attributable to Iowa sources: 100 × $224,920 / $517,500 = 43.4628%.

Taxpayer's computation of percent income attributable to non-Iowa sources: 100 - 43.4628% = 56.5372%.

EXAMPLE 2. The following example is based on the following facts. The taxpayers are a husband and wife who have three dependent children. Their income consists of husband's wages of $100,000; wife's wages of $30,000; husband's S corporation income of $400,000; wife's S corporation income of $200,000; joint interest income of $82,000; joint dividends of $5,000. They have Iowa itemized deductions of $40,000 and an out-of-state tax credit of $1,700 on the S corporation income. The actual cash distribution from the S corporation was $210,000, none of which has been previously taxed by Iowa. Federal income tax paid during the year totals $263,722. The S corporation is a value-added corporation which carries on business within and without Iowa with 60 percent of its sales in Iowa.

a. Computation of tax on a joint return basis.

Wages	$130,000
S corporation income	600,000
Interest	82,000
Dividends	5,000
Total income	$817,000
Less federal tax deduction	(263,722)
Subtotal	$553,278
Less itemized deductions	(40,000)
Taxable income	$513,278
Tax	$49,796
Less personal credits husband & wife & three dependents	(160)
Subtotal	$49,636
Less out-of-state tax credit	(1,700)
Iowa individual tax	$47,936
Computation of refund	
Total income	$817,000
Less S corporation income	(600,000)
Subtotal	$217,000
Add the greater of cash distributions not previously taxed $210,000 less 50% federal taxes on S corporation income of $96,838 = $126,043, or income attributable to Iowa sources $360,000	360,000
Income attributable to Iowa sources	$577,000
Total income	$817,000
Taxable percentage	70.6243%
Iowa individual tax before credit	$49,636
Credit percentage	29.3757%
Subtotal	$14,581
Less out-of-state tax credit	(1,700)
S corporation tax credit	$12,881
Amount of refund	$12,881

Computation of 50 percent of federal income tax attributable to S corporation income not to exceed cash distribution not previously taxed: 50% × $263,722 × $600,000 / $817,000 = 50% × $193,676 = $96,838.

Computation of percent of income attributable to Iowa sources: 100 × $577,000 / $817,000 = 70.6243%.

Computation of percent income attributable to non-Iowa sources: 100 - 70.6243% = 29.3757%.

b. Computation on a separate filing on a combined return basis.

	Spouse	Taxpayer
Wages	$30,000	$100,000
S corporation income	200,000	400,000
Interest	41,000	41,000
Dividends	2,500	2,500

Total income	$273,500	$543,500
Less federal tax deduction	(88,294)	(175,428)
Subtotal	$185,206	$368,072
Less itemized deductions	(13,392)	(26,608)
Taxable income	$171,814	$341,464
Tax	$15,718	$32,649
Less personal credits taxpayer & spouse & three dependents	(60)	(100)
Subtotal	$15,658	$32,549
Less out-of-state tax credit	(567)	(1,133)
Iowa individual tax	$15,091	$31,416
Computation of refund		
Total income	$273,500	$543,500
Less S corporation income	(200,000)	(400,000)
Subtotal	$73,500	$143,500
Add the greater of cash distributions not previously taxed, $210,000 less 50% of federal taxes on S corporation income of $96,838 = $126,043, or income attributable to Iowa sources, $360,000. Attributable 66.6667% to husband and 33.3333% to wife	120,000	240,000
Income attributable to Iowa sources	$193,500	$383,500
Total income	$273,500	$543,500
Taxable percentage	70.7495%	70.5612%
Iowa individual tax before out-of-state tax credit	$15,658	$32,549
Credit percentage	29.2505%	29.4388%
Subtotal	$4,580	$9,582
Less out-of-state tax credit	(567)	(1,133)
S corporation tax credit	$4,013	$8,449
Amount of refund	$4,013	$8,449

Computation of 50 percent of federal income tax attributable to S corporation income not to exceed cash distribution not previously taxed:

Husband: 50% × $175,428 × $400,000 / $543,500 = 50% × $129,109 = $64,555.

Wife: 50% × $88,294 × $200,000 / $273,500 = 50% × $64,566 = $32,283.

Husband's computation of percent of income attributable to Iowa sources: 100 × $383,500 / $543,500 = 70.5612%.

Husband's computation of percent income attributable to non-Iowa sources: 100 - 70.5612% = 29.4388%.

Wife's computation of percent of income attributable to Iowa sources: 100 × $193,500 / $273,500 = 70.7495%.

Wife's computation of percent of income attributable to non-Iowa sources: 100 - 70.7495% = 29.2505%.

This rule is intended to implement Iowa Code section 422.5, subsection 1, paragraph *"j."*

701—50.10(422) Example for tax periods beginning on or after January 1, 2002.

EXAMPLE. The following example is based on the following facts. The taxpayers are a husband and wife who have two dependent children. Their income consists of husband's wages of $50,000; rental loss ($5,000); wife's S corporation income of $500,000; joint interest income of $35,000. They have Iowa

itemized deductions of $20,000, and an out-of-state tax credit of $1,150 on the S corporation income. The actual cash distribution from the S corporation was $289,840, none of which has been previously taxed by Iowa. Federal income tax paid during the year totals $191,214. The S corporation is a value-added corporation which carries on business within and without Iowa with 10 percent of its sales in Iowa.

a. Computation of tax on a joint return basis.

Wages	$50,000
S corporation income	500,000
Interest	35,000
Rent	(5,000)
Total income	$580,000
Less federal tax deduction	(191,214)
Subtotal	$388,786
Less itemized deductions	(20,000)
Taxable income	$368,786
Tax	$31,696
Less personal credits husband & wife & two dependents	(160)
Subtotal	$31,536
Less out-of-state tax credit	(1,150)
Iowa individual tax	$30,386

Computation of refund

Total income	$580,000
Less S corporation income	(500,000)
Subtotal	$80,000
Add the greater of cash distributions not previously taxed, $289,840 less 100% of federal taxes on S corporation income of $164,840 = $125,000, or income attributable to Iowa sources $50,000	125,000
Income attributable to Iowa sources	$205,000
Total income	$580,000
Taxable percentage	35.3449%
Iowa individual tax before credit	$31,696
Credit percentage	64.6551%
Subtotal	$20,493
Less out-of-state tax credit	(1,150)
S corporation tax credit	$19,343
Amount of refund	$19,343

Computation of 100 percent of federal income tax attributable to S corporation income: $191,214 × $500,000 / $580,000 = $164,840.

Computation of percent of income attributable to Iowa sources: 100 × $205,000 / $580,000 = 35.3449%.

Computation of percent of income attributable to non-Iowa sources: 100 - 35.3449% = 64.6551%.

b. Computation on a separate filing on a combined return basis.

	Spouse	Taxpayer
Wages	$50,000	-0-
S corporation income	-0-	$500,000
Interest	17,500	17,500
Rent	(5,000)	-0-
Total income	$62,500	$517,500
Less federal tax deduction	(20,613)	(170,601)
Subtotal	$41,887	$346,899
Less itemized deductions	(2,156)	(17,844)
Taxable income	$39,731	$329,055
Tax	$2,293	$28,128
Less personal credits taxpayer & spouse & two dependents	(120)	(40)
Subtotal	$2,173	$28,088
Less out-of-state tax credit	(-0-)	(1,150)
Iowa individual tax	$2,173	$26,938

Computation of refund	
Total income	$517,500
Less S corporation income	(500,000)
Subtotal	$17,500
Add the greater of cash distributions not previously taxed $289,840 less 100% of federal taxes on S corporation income of $164,840 = $125,000, or income attributable to Iowa sources $50,000	125,000
Income attributable to Iowa sources	$142,500
Total income	$517,500
Taxable percentage	27.5362%
Iowa individual tax before credit	$28,128
Credit percentage	72.4638%
Subtotal	$20,383
Less out-of-state tax credit	(1,150)
S corporation tax credit	$19,233
Amount of refund	$19,233

Taxpayer's computation of 100 percent of federal income tax attributable to S corporation income: $170,601 × $500,000 / $517,500 = $164,832.

Taxpayer's computation of percent of income attributable to Iowa sources: 100 × $142,500 / $517,500 = 27.5362%.

Taxpayer's computation of percent of income attributable to non-Iowa sources: 100 - 27.5362% = 72.4638%.

This rule is intended to implement Iowa Code section 422.8, subsection 2, paragraph *"b,"* as amended by 2002 Iowa Acts, House File 2078.

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TITLE VI
CORPORATION

CHAPTER 51
ADMINISTRATION

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

701—51.1(422) Definitions.

51.1(1) When the word "department" appears herein, it refers to and is synonymous with the "Iowa Department of Revenue"; the word "director" is the "Director of Revenue" or the director's authorized assistants and employees; the word "tax" is the "corporation income tax"; and the word "return" is the "corporation income tax return."

The administration of the corporation income tax is a responsibility of the department. The department is charged with the administration of the corporation income tax, subject always to the rules, regulations and direction of the director.

51.1(2) The term "corporation" as used in divisions II and III of Iowa Code chapter 422 and in these rules includes not only corporations which have been created or organized under the laws of Iowa, but also those which are qualified to do, or are doing business in Iowa, in a corporate or organized capacity, by virtue of creation or organization under the laws of the United States or some state, territory or district or of a foreign country. The term "corporation" is not limited to the artificial entity usually known as a corporation, but includes also an association, a trust classed as an association because of its nature or its activities, a joint stock company, and certain kinds of partnerships. Any association or organization which is required to report as a corporation, for federal income tax purposes under the Internal Revenue Code, as amended, shall be considered to be a corporation for the purposes of Iowa income tax on corporations. For tax years beginning on or after January 1, 1987, the term "corporation" includes publicly traded partnerships which are taxed as corporations under the Internal Revenue Code. For tax years beginning on or after July 1, 1994, the term corporation includes limited liability companies taxed as corporations under the Internal Revenue Code. For tax years beginning on or after January 1, 1997, the term "corporation" includes partnerships taxed as corporations under the Internal Revenue Code.

51.1(3) The term "association" is not used in the law in any narrow or technical sense. It includes any organization created for the transaction of designated affairs, or the attainment of some object, which like a corporation continues notwithstanding that its members or participants change, and the affairs of which, like corporate affairs, are conducted by a single individual, a committee, a board, or some other group, acting in a representative capacity. It is immaterial whether such organization is created by an agreement, a declaration of trust, a statute, or otherwise. It includes a voluntary association, a joint stock association or company, a business trust, a Massachusetts trust, a common law trust, a partnership association, and any other type of organization, by whatever name known, which is not, within the meaning of the law, a trust or an estate, or a partnership. An investment trust of the type commonly known as a management trust is an association, and a trust of the type commonly known as a fixed investment trust, is an association if there is power under the trust agreement to vary the investment of the certificate holders. If the conduct of the affairs of a corporation continues after the expiration of its charter, or the termination of its existence, it becomes an association.

51.1(4) The term "Internal Revenue Code" means the Internal Revenue Code of 1954 prior to the date of its redesignation as the Internal Revenue Code of 1986 or the Internal Revenue Code of 1986, whichever is applicable.

51.1(5) The terms "consolidation" and "corporate merger" have the following meaning in regard to corporate reorganizations. A "consolidation" is unification of two or more constituent corporations into a single newly existing corporation in which the new corporation takes over assets and assumes liabilities of constituent corporations which pass out of existence; a "corporate merger" is distinguished

by continuing existence of one of the constituent corporations into which other corporations are merged. *Handley v. Wyandotte Chemicals Corp.,* 352 N.W.2d 447, 450, 118 Mich. App. 423.

This rule is intended to implement Iowa Code section 422.32 as amended by 1997 Iowa Acts, House File 266.

701—51.2(422) Statutes of limitation.

51.2(1) *Periods of audit.*

a. The department has three years after a return has been filed or three years after the return became due, including any extensions of time for filing, whichever time is the later, to determine whether any additional tax other than that shown on the return is due and owing. This three-year statute of limitations does not apply in the instances specified in paragraphs *"b," "c," "d," "e," "f"* and *"g."*

b. If a taxpayer fails to include in the return such items of gross income as defined in the Internal Revenue Code, as amended, as will under that Code extend the statute of limitations for federal tax purposes to six years, the correct amount of tax due may be determined by the department within six years from the time the return is filed, or within six years after the return became due, including any extensions of time for filing, whichever time is the later.

c. If a taxpayer files a false or fraudulent return with intent to evade tax, the correct amount of tax due may be determined by the department at any time after the return has been filed.

d. If a taxpayer fails to file a return, the periods of limitation so specified in Iowa Code section 422.25 do not begin to run until the return is filed with the department.

e. While the burden of proof of additional tax owing under the six-year period or the unlimited periods is upon the department, a prima facie case of omission of income, or of making a false or fraudulent return, shall be made upon a showing of a federal audit of the same income, a determination by federal authorities that the taxpayer omitted items of gross income or made a false or fraudulent return, and the payment by the taxpayer of the amount claimed by the federal government to be the correct tax or the admission by the taxpayer to the federal government of liability for that amount.

f. In addition to the periods of limitation set forth in paragraph *"a," "b," "c," "d,"* or *"e,"* the department has six months after notification by the taxpayer of the final disposition of any matter between the taxpayer and the Internal Revenue Service with respect to any particular tax year to make an examination and determination. Final disposition of any matter between the taxpayer and the Internal Revenue Service triggers the extension of the statute of limitations for the department to make an examination and determination, and the extension runs until six months after the department receives notification and a copy of the federal document showing the final disposition or final federal adjustments from the taxpayer. *Van Dyke v. Iowa Department of Revenue and Finance,* 547 N.W.2d 1. This examination and determination is limited to those matters between the taxpayer and the Internal Revenue Service which affect Iowa taxable income. *Kelly-Springfield Tire Co. v. Iowa State Board of Tax Review,* 414 N.W.2d 113 (Iowa 1987). The notification shall be in writing in any form sufficient to inform the department of final disposition, and attached to the notification shall be a photo reproduction or carbon copy of the federal document which shows the final disposition and any schedules necessary to explain the federal adjustments. The notification and copy of the federal document shall be mailed, under separate cover, to the Examination Section, Compliance Division, Iowa Department of Revenue, P.O. Box 10456, Des Moines, Iowa 50306. Any notification and copy of the federal document which is included in, made a part of, or mailed with a current year Iowa corporation income tax return will not be considered as proper notification for the purposes of beginning the running of the six-month period.

When a taxpayer's income or loss is included in a consolidated federal corporation income tax return, notification shall include a schedule of adjustments to the taxpayer's income, a copy of the revenue agent's tax computation, a schedule of revised foreign tax credit on a separate company basis if applicable, and a schedule of consolidating income statements after federal adjustments.

g. In lieu of the above periods of limitation for any prior year for which an overpayment of tax or an elimination or reduction of an underpayment of tax due for that prior year results from the carryback to such prior year of a net operating loss or net capital loss, the period shall be the period of limitations for the taxable year of the net operating loss or net capital loss which results in such carryback.

h. The department may, at any time within the period prescribed for assessment or refund adjustment, make a supplemental assessment or refund adjustment whenever it is ascertained that any assessment or refund adjustment is imperfect or incomplete in any respect.

If an assessment or refund adjustment is appealed (protested under rule 701—7.41(17A)) and is resolved whether by informal proceedings or by adjudication, the department and the taxpayer are precluded from making a supplemental assessment or refund adjustment concerning the same issue involved in such appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation. Nothing in this rule shall prevent the making of an assessment or refund adjustment for the purpose of taking into account the impact upon Iowa net income of federal audit adjustments.

51.2(2) *Waiver of statute of limitations.* Rescinded IAB 11/24/04, effective 12/29/04.

51.2(3) *Waiver of statute of limitations.* Waivers entered into on or after July 1, 1989. When the department and the taxpayer enter into an agreement to extend the period of limitation, interest continues to accrue on an assessed deficiency or overpayment during the period of the waiver. The taxpayer may claim a refund during the period of the waiver.

51.2(4) *Amended returns filed within 60 days of the expiration of the statute of limitations for assessment.* If a taxpayer files an amended return on or after April 1, 1995, within 60 days prior to the expiration of the statute of limitations for assessment, the department has 60 days from the date the amended return is received to issue an assessment for applicable tax, interest, or penalty.

This rule is intended to implement Iowa Code sections 422.25, 422.30, and 422.35.

701—51.3(422) Retention of records.

51.3(1) Every corporation subject to the tax imposed by Iowa Code section 422.33 (whether or not the corporation incurs liability for the tax) shall retain its books and records as required by Section 6001 of the Internal Revenue Code and Treasury Regulation Section 1.6001-1(e) including the federal schedules required by 701—subrule 52.3(3). For taxpayers using an electronic data interchange process or technology also see 701—subrule 11.4(4).

51.3(2) In addition, records relating to the computation of the Iowa apportionment factor, allocable income and other deductions or additions to federal taxable income shall be retained so long as the contents may be material in the administration of the Iowa Code under the statutes of limitation for audit specified in section 422.25.

This rule is intended to implement Iowa Code sections 422.25 and 422.70.

701—51.4(422) Cancellation of authority to do business. If a corporation required by Iowa Code section 422.40 to file any report or return (including returns of information at source) or to pay any tax or fee, fails to do so within 90 days after the time prescribed for making such returns or payment, the director may certify such fact to the secretary of state, who shall thereupon cancel the articles of incorporation or certificate of authority (as the case may be) of such corporation, and the rights to such corporation to carry on business in the state of Iowa as a corporation shall thereupon cease. The statute provides for a penalty of not less than $100 nor more than $1,000 for any person or persons who continue to exercise or attempt to exercise any powers, privileges, or franchises granted under articles of incorporation or certificate of authority after cancellation of the same.

This rule is intended to implement Iowa Code section 422.40.

701—51.5(422) Authority for deductions. Whether and to what extent deductions shall be allowed depends upon specific legislative acts, and only where there is a clear provision can any particular deduction be allowed. Therefore, a deduction will be allowed only if the taxpayer can establish to the satisfaction of the department the validity and correctness of such deduction. 71 Am. Jur. 2d State and Local Taxation, Subsection 518 (1973).

This rule is intended to implement Iowa Code section 422.35.

701—51.6(422) Jeopardy assessments.

51.6(1) A jeopardy assessment may be made where a return has been filed and the director believes for any reason that collection of the tax will be jeopardized by delay, or where a taxpayer fails to file a return, whether or not formally called upon to file a return. The department is authorized to estimate the income of the taxpayer upon the basis of available information, add penalty and interest, and demand immediate payment.

51.6(2) A jeopardy assessment is due and payable when the notice of the assessment is served upon the taxpayer. Proceedings to enforce the payment of the assessment by seizure or sale of any property of the taxpayer may be instituted immediately.

This rule is intended to implement Iowa Code section 422.30.

701—51.7(422) Information confidential. Iowa Code sections 422.20 and 422.72 apply generally to the director, deputies, auditors, examiners, agents, present or former officers and employees of the department. Disclosure of information from a taxpayer's filed return or report or other confidential state information by department of revenue personnel to a third person is prohibited under the above sections. Other persons having acquired information disclosed in a taxpayer's filed return or report or other confidential state information will be bound by the same rules of secrecy under these sections as any member of the department and will be subject to the same penalties for violations as provided by law. See rule 701—6.3(17A).

This rule is intended to implement Iowa Code sections 422.20, 422.38, and 422.72.

701—51.8(422) Power of attorney. For information regarding power of attorney, see rule 701—7.34(421) and 7.38(421,17A).

701—51.9(422) Delegation of authority to audit and examine. Pursuant to statutory authority the director delegates to the authorized assistants and employees the power to examine returns and make audits; and to determine the correct amount of tax due, subject to review by or appeal to the director.

This rule is intended to implement Iowa Code section 422.71.

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CHAPTER 52
FILING RETURNS, PAYMENT OF TAX AND PENALTY AND INTEREST

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

701—52.1(422) Who must file. Every corporation, organized under the laws of Iowa or qualified to do business within this state or doing business within Iowa, regardless of net income, shall file a true and accurate return of its income or loss for the taxable period. The return shall be signed by the president or other duly authorized officer. If the corporation was inactive or not doing business within Iowa, although qualified to do so, during the taxable year, the return must contain a statement to that effect.

For tax years beginning on or after January 1, 1989, every corporation organized under the laws of Iowa, doing business within Iowa, or deriving income from sources consisting of real or tangible property located or having a situs within Iowa, shall file a true and accurate return of its income or loss for the taxable period. The return shall be signed by the president or other duly authorized officer.

For tax years beginning on or after January 1, 1995, every corporation organized under the laws of Iowa, doing business within Iowa, or deriving income from sources consisting of real, tangible, or intangible property located or having a situs within Iowa, shall file a true and accurate return of its income or loss for the taxable period. The return shall be signed by the president or other duly authorized officer. For tax years beginning on or after January 1, 1999, every corporation doing business within Iowa, or deriving income from sources consisting of real, tangible, or intangible property located or having a situs within Iowa, shall file a true and accurate return of its income or loss for the taxable period. The return shall be signed by the president or other duly authorized officer.

Political organizations described in Internal Revenue Code Section 527 which are domiciled in this state and are required to file federal Form 1120POL and pay federal corporation income tax are subject to Iowa corporation income tax to the same extent as they are subject to federal corporation income tax.

Homeowners associations described in Internal Revenue Code Section 528 which are domiciled in this state and are required to file federal Form 1120H and pay federal corporation income tax are subject to Iowa corporation income tax to the same extent as they are subject to federal corporation income tax.

52.1(1) *Definitions.*

a. Doing business. The term "doing business" is used in a comprehensive sense and includes all activities or any transactions for the purpose of financial or pecuniary gain or profit. Irrespective of the nature of its activities, every corporation organized for profit and carrying out any of the purposes of its organization shall be deemed to be "doing business." In determining whether a corporation is doing business, it is immaterial whether its activities actually result in a profit or loss.

b. Representative. A person may be considered a representative even though that person may not be considered an employee for other purposes such as withholding of income tax from commissions.

c. Tangible property having a situs within this state. The term "tangible property having a situs within this state" means that tangible property owned or used by a foreign corporation is habitually present in Iowa or it maintains a fixed and regular route through Iowa sufficient so that Iowa could constitutionally under the 14th Amendment and Commerce Clause of the United States Constitution impose an apportioned ad valorem tax on the property. *Central R. Co. v. Pennsylvania*, 370 U.S. 607, 82 S. Ct. 1297, 8 L.Ed.2d (1962); *New York Central & H. Railroad Co. v. Miller*, 202 U.S. 584, 26 S. Ct. 714, 50 L.Ed. 1155 (1906); *American Refrigerator Transit Company v. State Tax Commission*, 395 P.2d 127 (Or. 1964); *Upper Missouri River Corporation v. Board of Review*, Woodbury County, 210 N.W.2d 828.

d. Intangible property located or having a situs within Iowa. Intangible property does not have a situs in the physical sense in any particular place. *Wheeling Steel Corporation v. Fox*, 298 U.S. 193, 80 L.Ed. 1143, 56 S.Ct. 773 (1936); *McNamara v. George Engine Company, Inc.*, 519 So.2d 217 (La. App. 1988). The term "intangible property located or having a situs within Iowa" means generally that the intangible property belongs to a corporation with its commercial domicile in Iowa or, regardless of where the corporation which owns the intangible property has its commercial domicile, the intangible property has become an integral part of some business activity occurring regularly

in Iowa. *Beidler v. South Carolina Tax Commission*, 282 U.S. 1, 75 L.Ed. 131, 51 S.Ct. 54 (1930); *Geoffrey, Inc. v. South Carolina Tax Commission*, 437 S.E.2d 13 (S.C. 1993), cert. denied, 114 S.Ct. 550 (1993). The following is a noninclusive list of types of intangible property: copyrights, patents, processes, franchises, contracts, bank deposits including certificates of deposit, repurchase agreements, loans, shares of stocks, bonds, licenses, partnership interests including limited partnership interests, leaseholds, money, evidences of an interest in property, evidences of debts, leases, an undivided interest in a loan, rights-of-way, and interests in trusts.

The term also includes every foreign corporation which has acquired a commercial domicile in Iowa and whose property has not acquired a constitutional tax situs outside of Iowa.

52.1(2) *Corporate activities not creating taxability.* Public Law 86-272, 15 U.S.C.A., Sections 381-385, in general prohibits any state from imposing an income tax on income derived within the state from interstate commerce if the only business activity within the state consists of the solicitation of orders of tangible personal property by or on behalf of a corporation by its employees or representatives. Such orders must be sent outside the state for approval or rejection and, if approved, must be filled by shipment or delivery from a point outside the state to be within the purview of Public Law 86-272. Public Law 86-272 does not extend to those corporations which sell services, real estate, or intangibles in more than one state or to domestic corporations. For example, Public Law 86-272 does not extend to brokers or manufacturers' representatives or other persons or entities selling products for another person or entity.

a. If the only activities in Iowa of a foreign corporation selling tangible personal property are those of the type described in the noninclusive listing below, the corporation is protected from the Iowa corporation income tax law by Public Law 86-272.

(1) The free distribution by salespersons of product samples, brochures, and catalogues which explain the use of or laud the product, or both.

(2) The lease or ownership of motor vehicles for use by salespersons in soliciting orders.

(3) Salespersons' negotiation of a price for a product, subject to approval or rejection outside the taxing state of such negotiated price and solicited order.

(4) Demonstration by salesperson, prior to the sale, of how the corporation's product works.

(5) The placement of advertising in newspapers, radio, and television.

(6) Delivery of goods to customers by foreign corporation in its own or leased vehicles from a point outside the taxing state. Delivery does not include nonimmune activities, such as picking up damaged goods.

(7) Collection of state or local-option sales taxes or state use taxes from customers.

(8) Audit of inventory levels by salespersons to determine if corporation's customer needs more inventory.

(9) Recruitment, training, evaluation, and management of salespersons pertaining to solicitation of orders.

(10) Salespersons' intervention/mediation in credit disputes between customers and non-Iowa located corporate departments.

(11) Use of hotel rooms and homes for sales-related meetings pertaining to solicitation of orders.

(12) Salespersons' assistance to wholesalers in obtaining suitable displays for products at retail stores.

(13) Salespersons' furnishing of display racks to retailers.

(14) Salespersons' advice to retailers on the art of displaying goods to the public.

(15) Rental of hotel rooms for short-term display of products.

(16) Mere forwarding of customer questions, concerns, or problems by salespersons to non-Iowa locations.

b. For tax years beginning on or after January 1, 1996, a foreign corporation will not be considered doing business in this state or deriving income from sources within this state if its only activities within this state are one or more of the following activities:

(1) Holding meetings of the board of directors or shareholders, or holiday parties, or employee appreciation dinners.

(2) Maintaining bank accounts.

(3) Borrowing money, with or without security.

(4) Utilizing Iowa courts for litigation.

(5) Owning and controlling a subsidiary corporation which is incorporated in or which is transacting business within this state where the holding or parent company has no physical presence in the state as that presence relates to the ownership or control of the subsidiary.

(6) Recruiting personnel where hiring occurs outside the state.

c. For tax years beginning on or after January 1, 1997, a foreign corporation will not be considered doing business in this state or deriving income from sources within this state if its only activities within this state, in addition to the activities listed in paragraph *"b"* above, are training its employees or educating its employees, or using facilities in this state for this purpose.

d. For tax years beginning on or after January 1, 2006, a foreign corporation will not be considered to be doing business in Iowa or deriving income from sources within Iowa if its only activities within Iowa, in addition to the activities listed in paragraphs "b" and "c" of this subrule, are utilizing a distribution facility in Iowa, owning or leasing property at a distribution facility in Iowa, or selling property shipped or distributed from a distribution facility in Iowa.

A distribution facility is an establishment at which shipments of tangible personal property are processed for delivery to customers. A distribution facility does not include an establishment at which retail sales of tangible personal property or returns of such property are undertaken with respect to retail customers more than 12 days in a year. However, an exception to the 12-day requirement is allowed for distribution facilities that process customer orders by mail, telephone, or electronic means, if the distribution facility also processes shipments of tangible personal property to customers, as long as no more than 10 percent of the goods are delivered or shipped to a purchaser in Iowa.

The following nonexclusive examples illustrate how this subrule applies:

EXAMPLE 1: A, a foreign corporation, stores its inventory of books at a facility in Iowa. The facility processes orders for these books solely by mail, telephone and the Internet on behalf of A, and customers are not allowed to purchase books at the facility's site in Iowa. The facility processes shipments of these books, and 5 percent of the books at this facility are delivered to purchasers located in Iowa. A does not conduct any other business activities in Iowa. A is not considered to be doing business in Iowa because less than 10 percent of the books at the facility are delivered to an Iowa customer.

EXAMPLE 2: B, a foreign corporation, stores its inventory of compact disks at a facility in Iowa. The facility processes orders for these compact disks solely by mail, telephone and the Internet on behalf of B, and customers are not allowed to purchase compact disks at the facility's site in Iowa. The facility processes shipments of these compact disks, and 15 percent of the compact disks at the facility are delivered to purchasers located in Iowa. B does not conduct any other business activities in Iowa. B is considered to be doing business in Iowa because more than 10 percent of the compact disks at the facility are delivered to an Iowa customer.

EXAMPLE 3: C, a foreign corporation, stores its inventory of doors and windows at a facility in Iowa. The facility processes orders for these windows and doors solely by mail, telephone and the Internet, and customers are not allowed to purchase these windows and doors at the facility's site in Iowa. The facility processes shipments of these windows and doors, and 7 percent of the windows and doors are delivered to purchasers located in Iowa. C will also install these windows and doors in Iowa upon customer request. C is considered to be doing business in Iowa even though less than 10 percent of the windows and doors are delivered to Iowa customers because C is also conducting installation activities in Iowa which are not protected under Public Law 86-272.

EXAMPLE 4: D, a foreign corporation, stores its inventory of home decorating and craft kits at a facility in Iowa. The facility does not process any customer orders by mail, telephone or the Internet, and does not process any shipments of these kits directly to customers. D allows customers to come to the facility 14 days each year to directly purchase these kits, and customers must arrange for their own delivery of the kits. D is considered to be doing business in Iowa because sales to retail customers are conducted more than 12 days in a year, and the facility does not process customer orders or shipments to customers.

52.1(3) *Corporate activities creating taxability.* "Solicitation of orders" within Public Law 86-272 is limited to those activities which explicitly or implicitly propose a sale or which are entirely ancillary to requests for purchases. Activities that are entirely ancillary to requests for purchases are ones that serve no independent business function apart from their connection to the soliciting of orders. An activity that is not ancillary to requests for purchases is one that a corporation (taxpayer) has a reason to do anyway whether or not it chooses to allocate it to its sales force operating in Iowa (such as repair, installation, service-type activities, or collection on accounts). Activities that take place after a sale ordinarily will not be entirely ancillary to a request for purchases and, therefore, ordinarily will not be considered in "solicitation of orders." *Wisconsin Department of Revenue v. William Wrigley, Jr. Company*, 505 U.S. 214, 120 L.Ed.2d 174, 112 S.Ct. 2447 (1992).

De minimis activities which are not "solicitation of orders" are protected under Public Law 86-272. Whether in-state nonsolicitation activities are sufficiently de minimis to avoid loss of tax immunity depends upon whether those activities establish only a trivial additional connection with the taxing state. Whether a corporation's nonsolicitation in-state activities are de minimis should not be decided solely by the quantity of one type of such activity but, rather, all types of nonsolicitation activities of the taxpayer should be considered in their totality. *Wisconsin v. Wrigley*, 505 U.S. 214, 120 L.Ed.2d 174, 112 S.Ct. 2447 (1992). Frequency of the activity may be relevant, but an isolated activity is not invariably trivial. The mere fact that an activity involves small amounts of money or property does not invariably mean it is trivial.

If a foreign corporation has greater than a de minimis amount of Iowa nonsolicitation activity which includes activity of the types described in the noninclusive listing below, whether done by the salesperson, other employee, or other representative, it is not immunized from the Iowa corporation income tax by Public Law 86-272.

a. Installation or assembly of the corporate product.

b. Ownership or lease of real estate by corporation.

c. Solicitation of orders for, or sale of, services or real estate.

d. Sale of tangible personal property (as opposed to solicitation of orders) or performance of services within Iowa.

e. Maintenance of a stock of inventory.

f. Existence of an office or other business location.

g. Managerial activities pertaining to nonsolicitation activities.

h. Collections on regular or delinquent accounts.

i. Technical assistance and training given after the sale to purchaser and user of corporate products.

j. The repair or replacement of faulty or damaged goods.

k. The pickup of damaged, obsolete, or returned merchandise from purchaser or user.

l. Rectification of or assistance in rectifying any product complaints, shipping complaints, etc., if more is involved than relaying complaints to a non-Iowa location.

m. Delivery of corporate merchandise inventory to corporation's distributors or dealers on consignment.

n. Maintenance of personal property which is not related to solicitation of orders.

o. Participation in recruitment, training, monitoring, or approval of servicing distributors, dealers, or others where purchasers of corporation's products can have such products serviced or repaired.

p. Inspection or verification of faulty or damaged goods.

q. Inspection of the customer's installation of the corporate product.

r. Research.

s. Salespersons' use of part of their homes or other places as an office if the corporation pays for such use.

t. The use of samples for replacement or sale; storage of such samples at home or in rented space.

u. Removal of old or defective products.

v. Verification of the destruction of damaged merchandise.

w. Independent contractors, agents, brokers, representatives and other individuals or entities who act on behalf of or at the direction of the corporation (taxpayer) and who do non-de minimis amounts of nonsolicitation activities remove the corporation from the protection of Public Law 86-272. However, the maintenance of an office in Iowa or the making of sales in Iowa by independent contractors does not remove the corporation from the protection of Public Law 86-272. The term "independent contractors" means commission agents, brokers, or other independent contractors who are engaged in selling or soliciting orders for the sale of tangible personal property or perform other services for more than one principal and who hold themselves out as such in the regular course of their business activities. If a person is subject to the direct control of the foreign corporation that person may not qualify as an independent contractor.

52.1(4) *Taxation of corporations having only intangible property located or having a situs in Iowa.* For tax years beginning on or after January 1, 1995, corporations whose only connection with Iowa is their ownership of intangible property located or having a situs in Iowa are subject to Iowa income tax and must file an Iowa income tax return. Intangible property is located or has a situs in Iowa if the corporation's commercial domicile is in Iowa and the intangible property has not become an integral part of some business activity occurring regularly within or without Iowa. Regardless whether the corporation's commercial domicile is in or out of Iowa, intangible property is located or has a situs in Iowa if the intangible property has become an integral part of some business activity occurring regularly in Iowa. *Geoffrey, Inc. v. South Carolina Tax Commission*, 437 S.E.2d 13 (S.C. 1993), cert. denied, 114 S.Ct. 550 (1993); *Arizona Tractor Company v. Arizona State Tax Commission*, 115 Ariz. 602, 566 P.2d 1348 (Ariz. App. 1977). In the event that the intangible property interest is a general or limited partnership interest, the location or situs of that partnership interest is the place(s) where the partnership conducts business. *Arizona Tractor Company v. Arizona State Tax Commission*, supra.

The following nonexclusive examples illustrate how this subrule applies:

EXAMPLE 1: A, a corporation with a commercial domicile in State X, has a limited partnership interest in a partnership which does a regular business in Iowa. A has no physical presence in Iowa and has no other contact with Iowa. A's interest in the limited partnership is intangible personal property. A is required to file an Iowa income tax return because A's intangible personal property limited partnership interest has a business situs in Iowa. *Arizona Tractor Company v. Arizona State Tax Commission*, supra.

EXAMPLE 2: B, a corporation with a commercial domicile in State X, owns stock in a subsidiary corporation doing business regularly in Iowa. B has no physical presence in Iowa and has no other contact with Iowa. B controls the subsidiary and has a unitary relationship with it. B pledged the subsidiary stock to secure a line of credit from a bank and used the loaned funds in B's business. Under these circumstances, the subsidiary stock is not an integral part of the subsidiary's business and, therefore, the stock does not have a location or situs in Iowa. Accordingly, B is not required to file an Iowa income tax return as a result of any dividends received by B or capital gains received by B from the sale of the stock. *McNamara v. George Engine Company, Inc.*, 519 So.2d 217 (La. App. 1988).

EXAMPLE 3: C, a corporation with a commercial domicile in State X, owns trademarks and trade names which it, by license agreements, allows other corporations to use. Some of those other corporations do business in Iowa. The trademarks and trade names are used by these other corporations at their Iowa stores in connection with their business activities at those stores. C has no physical presence in Iowa and has no other contact with Iowa. C is paid royalties of 1 percent of net sales of the licensed products or services. C is required to file an Iowa income tax return because C's intangible property interests in the trademarks and trade names have situses in Iowa. *Geoffrey, Inc. v. South Carolina Tax Commission*, 437 S.E.2d 13 (S.C. 1993), cert. denied, 114 S.Ct. 550 (1993).

EXAMPLE 4: D, a corporation with a commercial domicile in Iowa, is a holding company which does not sell any tangible personal property or sell any business service but which does own the stock of five subsidiaries, all of which do business outside of Iowa. D has no physical presence outside of Iowa and has no other contact outside of Iowa. D has a unitary relationship with each subsidiary. Under these circumstances, the stock is not an integral part of each subsidiary's business so the stock does not have a location or situs outside of Iowa. The location or situs of the stock is in Iowa because D's commercial

domicile is in Iowa. Accordingly, all of the dividends from the stock paid to D and any capital gains incurred as a result of D's sale of the stock are wholly taxed by Iowa.

EXAMPLE 5: E, a corporation with a commercial domicile in Iowa, owns trademarks and trade names which it, by license agreements, allows other corporations, located outside of Iowa, to use. The trademarks and trade names are used by these other corporations at their non-Iowa stores in connection with their business activities at those stores. E has no physical presence outside of Iowa and has no other contact outside of Iowa. E has business activities in Iowa. The fees and royalties paid to E are part of E's unitary business income. Under these circumstances, E is entitled to apportion its net income within and without Iowa because E's intangible property interests in the trademarks and trade names have situses outside of Iowa and E has business activities in Iowa.

EXAMPLE 6: F, a corporation with a commercial domicile in State X, owns all of the stock of a subsidiary corporation doing business in Iowa. F has no physical presence in Iowa and no other contact with Iowa. F loans funds to the subsidiary which the subsidiary uses in its Iowa business. Under these circumstances, the interest-bearing asset is not an integral part of the subsidiary's business and, therefore, that intangible asset does not have a location or situs in Iowa. Accordingly, F is not required to file an Iowa income tax return. *Beidler v. South Carolina Tax Commission*, 282 U.S. 1, 75 L.Ed.131, 51 S.Ct. 54 (1930).

EXAMPLE 7: G, a corporation with a commercial domicile in State X, earns fees from the licensing of custom computer software. G has no physical presence in Iowa and no other contact with Iowa. G licenses the software to other corporations which do business in Iowa and which use the software in that business in Iowa. Under these circumstances, regardless whether the fees constitute royalties or something else, the license fees are earned from intangible personal property with a location or situs in Iowa. Accordingly, G is required to file an Iowa income tax return.

EXAMPLE 8: H, a corporation with a commercial domicile in State X, has no physical presence in Iowa. H has entered into a contract with an independent contractor to solicit sales of H's magazines in Iowa. The independent contractor does business in Iowa and receives payment for the magazines and deposits the funds in an Iowa bank for H's account. H earns interest on this account. Under these circumstances which are H's only contact with Iowa, H's interest-bearing account is an integral part of business activity in Iowa. Accordingly, H is required to file an Iowa income tax return and include the interest income in the numerator of the business activity formula.

52.1(5) *Taxation of "S" corporations, domestic international sales corporations and real estate investment trusts.* Certain corporations and other types of entities, which are taxable as corporations for federal purposes, may by federal election and qualification have a portion or all of their income taxable to the shareholders or the beneficiaries. Generally, the state of Iowa follows the federal provisions (with adjustments provided by Iowa law) for determining the amount and to whom the income is taxable. Examples of entities which may avail themselves of pass-through provisions for taxation of at least part of their net income are real estate investment trusts, small business corporations electing to file under Sections 1371-1378 of the Internal Revenue Code, domestic international sales corporations as authorized under Sections 991-997 of the Internal Revenue Code, and certain types of cooperatives and regulated investment companies. The entity's portion of the net income which is taxable as corporation net income for federal purposes is generally also taxable as Iowa corporation income (with adjustments as provided by Iowa law) and the shareholders or beneficiaries will report on their Iowa returns their share of the organization's income reportable for federal purposes as shareholder income (with adjustments provided by Iowa law). Nonresident shareholders or beneficiaries are required to report their distributive share of said income reasonably attributable to Iowa sources. Schedules shall be filed with the individual's return showing the computation of the income attributable to Iowa sources and the computation of the nonresident taxpayer's distributive share thereof. Entities with a nonresident beneficiary or shareholder shall include a schedule in the return computing the amount of income as determined under 701—Chapter 54. It will be the responsibility of the entity to make the apportionment of the income and supply the nonresident taxpayer with information regarding the nonresident taxpayer's Iowa taxable income.

For tax years beginning on or after January 1, 1995, S corporations which are subject to tax on built-in gains under Section 1374 of the Internal Revenue Code or passive investment income under Section 1375 of the Internal Revenue Code are subject to Iowa corporation income tax on this income to the extent received from business carried on in this state or from sources in this state.

a. The starting point for computing the Iowa tax on built-in gains is the amount of built-in gains subject to federal tax after considering the federal income limitation. The starting point for computing the capital gains subject to Iowa tax is the amount of capital gains subject to federal tax. The starting point for computing the passive investment income subject to Iowa income tax is the amount of passive investment income subject to federal tax. To the extent that any of the above three types of income exist for federal income tax purposes, they are combined for Iowa income tax purposes.

b. No adjustment is made to the above amounts for either 50 percent of federal income tax or Iowa corporation income tax deducted in computing the federal net income of the S corporation for tax years beginning prior to January 1, 2008. The 50 percent of federal income tax and Iowa corporation income tax deducted in computing federal net income are adjustments to the Iowa net income which flows through to the shareholders for tax years beginning prior to January 1, 2008. For tax years beginning on or after January 1, 2008, an adjustment is made to the above amounts for either 50 percent of federal income tax or Iowa corporation income tax deducted in computing the federal net income of the S corporation.

c. The allocation and apportionment rules of 701—Chapter 54 apply to nonresident shareholders if the S corporation is carrying on business within and without the state of Iowa.

d. Any net operating loss carryforward arising in a taxable year for which the corporation was a C corporation shall be allowed as a deduction against the net recognized built-in gain, capital gains, or passive investment income of the S corporation for the taxable year. For purposes of determining the amount of any such loss which may be carried to any of the 15 subsequent taxable years, after the year of the net operating loss, the amount of the net recognized built-in gain shall be treated as taxable income. For taxable years beginning after August 5, 1997, a net operating loss can be carried forward 20 taxable years.

e. Except for estimated and other advance tax payments and any credit carryforward under Iowa Code section 422.33 arising in a taxable year for which the corporation was a C corporation no credits shall be allowed against the built-in gains tax or the tax on capital gains or passive investment income.

For tax years beginning after 1996, Iowa recognizes the federal election to treat subsidiaries of a parent corporation that has elected S corporation status as "qualified subchapter S subsidiaries" (QSSSs). To the extent that, for federal income tax purposes, the incomes and expenses of the QSSSs are combined with the parent's income and expenses, they must be combined for Iowa tax purposes.

52.1(6) *Exempted corporations and organizations filing requirements.*

a. *Exempt status.* An organization that is exempt from federal income tax under Section 501 of the Internal Revenue Code, unless the exemption is denied under Section 501, 502, 503 or 504 of the Internal Revenue Code, is exempt from Iowa corporation income tax except as set forth in paragraph *"e"* of this subrule. The department may, if a question arises regarding the exempt status of an organization, request a copy of the federal determination letter.

b. *Information returns.* Every corporation shall file returns of information as provided by Iowa Code sections 422.15 and 422.16 and any regulations regarding information returns.

c. *Annual return.* An organization or association which is exempt from Iowa corporation income tax because it is exempt from federal income tax is not required to file an annual income tax return unless it is subject to the tax on unrelated business income. The organization shall inform the director in writing of any revocation of or change of exempt status by the Internal Revenue Service within 30 days after the federal determination.

d. *Tax on unrelated business income for tax years beginning on or after January 1, 1988.* A tax is imposed on the unrelated business income of corporations, associations, and organizations exempt from the general business tax on corporations by Iowa Code section 422.34, subsection 2, to the extent this income is subject to tax under the Internal Revenue Code. The exempt organization is also subject to the alternative minimum tax imposed by Iowa Code section 422.33(4).

The exempt corporation, association, or organization must file Form IA 1120, Iowa Corporation Income Tax Return, to report its income and complete Form IA 4626 if subject to the alternative minimum tax. The exempt organization must make estimated tax payments if its expected income tax liability for the year is $1,000 or more.

The tax return is due the last day of the fourth month following the last day of the tax year and may be extended for six months by filing Form IA 7004 prior to the due date. For tax years beginning on or after January 1, 1991, the tax return is due on the fifteenth day of the fifth month following close of the tax year and may be extended six months if 90 percent of the tax is paid prior to the due date.

The starting point for computing Iowa taxable income is federal taxable income as properly computed before deduction for net operating losses. Federal taxable income shall be adjusted as required in Iowa Code section 422.35.

If the activities which generate the unrelated business income are carried on partly within and partly without the state, then the taxpayer should determine the portion of unrelated business income attributable to Iowa by the apportionment and allocation provisions of Iowa Code section 422.33.

The provisions of 701—Chapters 51, 52, 53, 54, 55 and 56 apply to the unrelated business income of organizations exempt from the general business tax on corporations.

e. Certain posts or organizations of past or present armed forces members may be tax-exempt corporations for tax years beginning after May 21, 2003. An organization that would have qualified as an organization exempt from federal income tax under Section 501(c)(19) of the Internal Revenue Code but for the fact that the requirement that 75 percent of the members need to be past or present armed forces members is not met because the membership includes ancestors or lineal descendants is considered to be an organization exempt from federal income tax.

This change is effective for tax years beginning after May 21, 2003.

52.1(7) *Income tax of corporations in liquidation.* When a corporation is in the process of liquidation, or in the hands of a receiver, the income tax returns must be made under oath or affirmation of the persons responsible for the conduct of the affairs of such corporations, and must be filed at the same time and in the same manner as required of other corporations.

52.1(8) *Income tax returns for corporations dissolved.* Corporations which have been dissolved during the income year must file income tax returns for the period prior to dissolution which has not already been covered by previous returns. Officers and directors are responsible for the filing of the returns and for the payment of taxes, if any, for the audit period provided by law.

Where a corporation dissolves and disposes of its assets without making provision for the payment of its accrued Iowa income tax, liability for the tax follows the assets so distributed and upon failure to secure the unpaid amount, suit to collect the tax may be instituted against the stockholders and other persons receiving the property, to the extent of the property received, except bona fide purchasers or others as provided by law.

52.1(9) *Income tax returns for corporations storing goods in an Iowa warehouse.* For tax years beginning on or after January 1, 2001, foreign corporations are not required to file income tax returns if their only activities in Iowa are the storage of goods for a period of 60 consecutive days or less in a warehouse for hire located in Iowa, provided that the foreign corporation transports or causes a carrier to transport such goods to that warehouse and that none of these goods are delivered or shipped to a purchaser in Iowa.

The following nonexclusive examples illustrate how this subrule applies:

EXAMPLE 1: A, a foreign corporation, stores goods in a warehouse for hire in Iowa for a period of 45 consecutive days. The goods are then delivered to a purchaser outside Iowa. If this is A's only activity in Iowa, A is not required to file an Iowa income tax return.

EXAMPLE 2: B, a foreign corporation, stores goods in a warehouse for hire in Iowa for a period of 75 consecutive days. The goods are then delivered to a purchaser outside Iowa. B is required to file an Iowa income tax return because the goods were stored in Iowa for more than 60 consecutive days.

EXAMPLE 3: C, a foreign corporation, stores goods in a warehouse for hire in Iowa for a period of 30 consecutive days. One percent of these goods are shipped to a purchaser in Iowa, and the other 99

percent are shipped to a purchaser outside Iowa. C is required to file an Iowa income tax return because a portion of the goods were shipped to a purchaser in Iowa.

EXAMPLE 4: D, a foreign corporation, has retail stores in Iowa. D also stores goods in a warehouse for hire in Iowa for a period of 30 consecutive days. The goods are then delivered to a purchaser outside Iowa. D is required to file an Iowa income tax return because its Iowa activities are not limited to the storage of goods in a warehouse for hire in Iowa.

EXAMPLE 5: E, a foreign corporation, has goods delivered by a common carrier, F, into a warehouse for hire in Iowa. The goods are stored in the warehouse for a period of 40 consecutive days, and are then delivered to a purchaser outside Iowa. If this is E's only activity in Iowa, E is not required to file an Iowa income tax return. However, F is required to file an Iowa income tax return because it derives income from transportation operations in Iowa.

52.1(10) *Deferment of income for start-up companies.* For tax periods beginning on or after January 1, 2002, but before January 1, 2008, a business that qualifies as a "start-up" business can defer taxable income for the first three years that the business is in operation. The deferment of income for start-up companies is repealed effective for tax years beginning on or after January 1, 2008.

a. Definition of start-up business. A start-up business for purposes of this subrule does not include any of the following:

(1) An existing business locating in Iowa from another state.

(2) An existing business locating in Iowa from another location in Iowa.

(3) A newly created business which is the result of the merger of two or more businesses.

(4) A newly created subsidiary or new business of a corporation.

(5) A previously existing business which has been dissolved and reincorporated.

(6) An existing business operating under a different name and located in a different location.

(7) A newly created partnership owned by two or more of the same partners as an existing business and engaging in similar business activity as the existing business.

(8) A business entity that reorganizes or experiences a change in either the legal or trade name of the business.

(9) A joint venture.

b. Criteria for deferment of taxable income. In order to qualify for the deferment of taxable income for a start-up business, each of the following criteria must be met:

(1) The taxpayer is a business that is a wholly new start-up business beginning operations during the first tax year for which the deferment of taxable income is claimed.

(2) The business has its commercial domicile, as defined by Iowa Code section 422.32, in Iowa.

(3) The operations of the business are funded by at least 25 percent venture capital moneys. "Venture capital moneys" means an equity investment from an individual or a private seed and venture capital fund whose only business is investing in seed and venture capital opportunities. "Venture capital moneys" does not mean a loan or other nonequity financing from a person, financial institution or other entity.

(4) The taxpayer does not have any delinquent taxes or other debt outstanding and owing to the state of Iowa.

c. Request for deferment of income. A taxpayer must submit a request to the department for the deferment of taxable income. The request must provide evidence that all of the criteria to qualify as a start-up business have been met. The request should be made as soon as possible after the close of the first tax year of the business. The request is to be filed with the Iowa Department of Revenue, Policy Section, Compliance Division, P.O. Box 10457, Des Moines, Iowa 50306-0457. Upon determination that the criteria have been met, the department will notify the taxpayer that the deferment of taxable income is approved. If the request for deferment of taxable income is denied, the taxpayer may file a protest within 60 days of the date of the letter denying the request for deferment of taxable income. The department's determination letter shall set forth the taxpayer's rights to protest the department's determination.

d. Filing of tax returns. If the request for deferment of taxable income is approved, taxable income for the first three years that the business is in operation is deferred. The taxpayer shall pay taxes on the deferred taxable income in five equal annual installments during the five tax years following the three

years of deferment. Tax returns must be filed for each tax year in which the deferment is approved. If the taxpayer has a net loss during any tax year during the three-year deferment period, the loss may be applied to any deferred taxable income during that period. For purposes of assessing penalty and interest, the tax on any deferred income is not due and payable until the tax years in which the five equal annual installments are due and payable.

The following nonexclusive examples illustrate how this subrule applies:

EXAMPLE 1: A qualifying start-up business reports Iowa taxable income of $1,000 in year one, $5,000 in year two and $10,000 in year three. The total tax deferred is $60 in year 1, $300 in year two and $600 in year three, or $960. The taxpayer shall pay $192 ($960 divided by 5) in deferred tax for each of the next five tax returns. No penalty or interest is due on the deferred annual tax of $192 if the returns for years four through eight are filed by the due date and the tax is timely paid. After the return for year three is filed, the department will issue a schedule to the qualifying business indicating that $192 of additional tax is due annually for years four through eight, and when the additional payments of $192 are due.

EXAMPLE 2: A qualifying start-up business reports an Iowa taxable loss of $10,000 in year one, a loss of $2,000 in year two and taxable income of $22,000 in year three. The losses for year one and year two can be netted against the income in year three, resulting in deferred taxable income of $10,000. The tax of $600 computed on income of $10,000 will be paid in five equal installments of $120 for the next five tax returns. No penalty or interest is due on the deferred annual tax of $120 if the returns for years four through eight are filed by the due date and the tax is timely paid. After the return for year three is filed, the department will issue a schedule to the qualifying business indicating that $120 of additional tax is due annually for years four through eight and when the additional payments of $120 are due.

This rule is intended to implement Iowa Code sections 422.21, 422.32, 422.33, 422.34, 422.34A, and 422.36 and Iowa Code section 422.24A as amended by 2008 Iowa Acts, Senate File 2400, section 66.

701—52.2(422) Time and place for filing return.

52.2(1) *Returns of corporations.* A return of income for all corporations must be filed on or before the due date. The due date for all corporations excepting cooperative associations as defined in Section 6072(d) of the Internal Revenue Code is the last day of the fourth month following the close of the taxpayer's taxable year, whether the return be made on the basis of the calendar year or the fiscal year; or the last day of the period covered by an extension of time granted by the director. When the due date falls on a Saturday, Sunday or a legal holiday, the return will be due the first business day following the Saturday, Sunday or legal holiday. If a return is placed in the mails, properly addressed and postage paid in ample time to reach the department on or before the due date for filing, no penalty will attach should the return not be received until after that date. Mailed returns should be addressed to Corporate Income Tax Processing, Hoover State Office Building, Des Moines, Iowa 50319.

52.2(2) *Returns of cooperatives.* A return of income for cooperatives, defined in Section 6072(d) of the Internal Revenue Code, must be filed on or before the fifteenth day of the ninth month following the close of the taxpayer's taxable year.

52.2(3) *Short period returns.* Where under a provision of the Internal Revenue Code, a corporation is required to file a tax return for a period of less than 12 months, a short period Iowa return must be filed for the same period. The short period Iowa return is due 45 days after the federal due date, not considering any federal extension of time to file.

52.2(4) *Extension of time for filing returns for tax years beginning on or after January 1, 1991.* See 701—subrule 39.2(4).

This rule is intended to implement Iowa Code sections 422.21 and 422.24.

701—52.3(422) Form for filing.

52.3(1) *Use and completeness of prescribed forms.* Returns shall be made by corporations on forms supplied by the department. Taxpayers not supplied with the proper forms shall make application for same to the department in ample time to have their returns made, verified and filed on or before the due

date. Each taxpayer shall carefully prepare the taxpayer's return so as to fully and clearly set forth the data required. For lack of a prescribed form, a statement made by a taxpayer disclosing the taxpayer's gross income and the deductions therefrom may be accepted as a tentative return, and if verified and filed within the prescribed time, will relieve the taxpayer from liability to penalties, provided that without unnecessary delay such a tentative return is replaced by a return made on the proper form. Each question shall be answered and each direction complied with in the same manner as if the forms and instructions were embodied in these rules.

Failure to receive the proper forms does not relieve the taxpayer from the obligation of making any return required by the statute.

Returns received which are not completed, but merely state "see schedule attached" are not considered to be a properly filed return and may be returned to the taxpayer for proper completion. This may result in the imposition of penalties and interest due to the return being filed after the due date.

52.3(2) *Form for filing—domestic corporations.* A domestic corporation, as defined by Iowa Code subsection 422.32(5), is required to file a complete Iowa return for each year of its existence regardless of whether the corporation has income, loss, or inactivity. For tax periods beginning on or after January 1, 1999, domestic corporations are required to file a complete Iowa return only if they are doing business in Iowa, or deriving income from sources within Iowa. However, the corporation may substitute a copy of the true and accurate federal income tax return as filed with the Internal Revenue Service in lieu of certain Iowa return schedules. This substitution is optional, but in all instances a detailed computation of the federal tax liability actually due the federal government shall be required as a part of the Iowa return. The Iowa schedules subject to the substitution provision are: income statement, balance sheet, reconciliation of income per books with income per return and analysis of unappropriated retained earnings per books.

When a domestic corporation is included in the filing of a consolidated federal income tax return, the Iowa corporation income tax return shall include a schedule of the consolidating income statements as properly computed for federal income tax purposes showing the income and expenses of each member of the consolidated group, and a schedule of capital gains on a separate basis.

If a domestic corporation claims a foreign tax credit, research activities credit, alcohol fuel credit, employer social security credit, or work opportunity credit on its federal income tax return, a detailed computation of the credits claimed shall be included with the Iowa return upon filing. In those instances where the domestic corporation is involved in the filing of a consolidated federal income tax return, the credit computations shall be reported on a separate entity basis.

Similarly, where a domestic corporation is charged with a holding company tax or an alternative minimum tax, the details of the taxes levied shall be put forth in a schedule to be included with the Iowa return. Furthermore, these taxes shall be identified on a separate company basis where the domestic corporation files as a member of a consolidated group for federal purposes.

52.3(3) *Form for filing—foreign corporations.* Foreign corporations, as defined by Iowa Code subsection 422.32(6), must include a true and accurate copy of their federal corporation income tax return as filed with the Internal Revenue Service with the filing of their Iowa return. At a minimum this return includes the following federal schedules: income statement, balance sheet, reconciliation of income per books with income per return, analysis of unappropriated retained earnings per books, dividend income and special deductions, cost of goods sold, capital gains, tax computation and tax deposits, research activities credit computation, work opportunity credit computation, foreign tax credit computation, alcohol fuel credit computation, employer social security credit computation, alternative minimum tax computation, and statements detailing other income and other deductions.

When a foreign corporation whose income is included in a consolidated federal income tax return files an Iowa return, federal consolidating income statements as properly computed for federal income tax purposes showing the income and expenses of each member of the consolidated group shall be required together with the following additional schedules on a separate basis:

a. Capital gains.

b. Dividend income and special deductions.

c. Research activities credit, alcohol fuel credit and employer social security credit computations.

d. Work opportunity credit computation.

e. Foreign tax credit computation.
f. Holding company tax computation.
g. Alternative minimum tax computation.
h. Schedules detailing other income and other deductions.

52.3(4) *Amended returns.* If it becomes known to the taxpayer that the amount of income reported to be federal net income or Iowa taxable income was erroneously stated on the Iowa return, or changed by Internal Revenue Service audit, or otherwise, the taxpayer shall file an amended Iowa return along with supporting schedules, to include the amended federal return and a copy of the federal revenue agent's report if applicable. A copy of the federal revenue agent's report and notification of final federal adjustments provided by the taxpayer will be acceptable in lieu of an amended return. The assessment or refund of tax shall be dependent on the statute of limitations as set forth in 701—subrule 51.2(1) and rule 701—55.3(422).

This rule is intended to implement Iowa Code section 422.21.

701—52.4(422) Payment of tax.

52.4(1) *Quarterly estimated payments.* Effective for taxable years beginning on or after July 1, 1977, corporations are required to make quarterly payments of estimated income tax. Rules pertaining to the estimated tax are contained in 701—Chapter 56.

52.4(2) *Full estimated payment on original due date.* Rescinded IAB 3/15/95, effective 4/19/95.

52.4(3) *Penalty and interest on unpaid tax.* See rule 701—10.6(421) for penalty for tax periods beginning on or after January 1, 1991. See rule 701—10.8(421) for statutory exemptions to penalty for tax periods beginning on or after January 1, 1991.

Interest shall accrue on tax due from the original due date of the return. Interest on refunds of any portion of the tax imposed by statute which has been erroneously refunded and which is recoverable by the department shall bear interest as provided by law from the date of payment of the refund, considering each fraction of a month as an entire month. See rule 701—10.2(421) for the statutory interest rate.

All payments shall be first applied to the penalty and then to the interest, and the balance, if any, to the amount of tax due.

52.4(4) *Payment of tax by uncertified checks.* The department will accept uncertified checks in payment of income taxes, provided the checks are collectible for their full amount without any deduction for exchange or other charges unless requirements for electronic transmission of remittances and related information specify otherwise. The date on which the department receives the check will be considered the date of payment, so far as the taxpayer is concerned, unless the check is dishonored. If one check is remitted to cover two or more corporations' taxes, the remittance must be accompanied by a letter of transmittal stating: (a) the name of the drawer of the check; (b) the amount of the check; (c) the amount of any cash, money order or other instrument included in the same remittance; (d) the name of each corporation whose tax is to be paid by the remittance; and (e) the amount of payment on account of each corporation.

52.4(5) *Procedure with respect to dishonored checks.* If any check is returned unpaid, all expenses incidental to the collection thereof will be charged to the taxpayer. If any taxpayer whose check has been returned by the depository bank uncollected should fail at once to make the check good, the director will proceed to collect the tax as though no check had been given. A taxpayer who tenders a certified check in payment for taxes is not relieved from his obligation until the check has been paid.

52.4(6) *New jobs credit.* Transferred to 52.8(422) IAB 11/28/90, effective 1/2/91.

This rule is intended to implement Iowa Code sections 422.21, 422.24, 422.25, 422.33 and 422.86.

701—52.5(422) Minimum tax.

52.5(1) Rescinded IAB 11/24/04, effective 12/29/04.

52.5(2) For tax years beginning after 1997, a small business corporation or a new corporation for its first year of existence, which through the operation of Internal Revenue Code Section 55(e) is exempt from the federal alternative minimum tax, is not subject to Iowa alternative minimum tax. A small

business corporation may apply any alternative minimum tax credit carryforward to the extent of its regular corporation income tax liability.

For tax years beginning on or after January 1, 1987, the minimum tax is imposed only to the extent that it exceeds the taxpayer's regular tax liability computed under Iowa Code subsection 422.33(1). The minimum tax rate is 60 percent of the maximum corporate tax rate rounded to the nearest one-tenth of 1 percent or 7.2 percent. Minimum taxable income is computed as follows:

	State taxable income as adjusted by Iowa Code section 422.35
Plus:	Tax preference items, adjustments and losses added back
Less:	Allocable income including allocable preference items and adjustments under Section 56 of the Internal Revenue Code including adjusted current earnings related to allocable income including the allocable preference items
	Subtotal
Times:	Apportionment percentage
	Result
Plus:	Income allocable to Iowa including allocable preference items and adjustments under Section 56 of the Internal Revenue Code including adjusted current earnings related to allocable income including the allocable preference items
Less:	Iowa alternative tax net operating less deduction
	$40,000 exemption amount
Equals:	Iowa alternative minimum taxable income

For tax years beginning on or after January 1, 1987, the items of tax preference are the same items of tax preference under Section 57 except for Subsections (a)(1) and (a)(5) of the Internal Revenue Code used to compute federal alternative minimum taxable income. The adjustments to state taxable income are those adjustments required by Section 56 except for Subsections (a)(4) and (d) of the Internal Revenue Code used to compute federal alternative minimum taxable income. In making the adjustment under Section 56(c)(1) of the Internal Revenue Code, interest and dividends from federal securities net of amortization of any discount or premium shall be subtracted. For tax years beginning on or after January 1, 1988, in making the adjustment under Section 56(c)(1) of the Internal Revenue Code, interest and dividends from state and other political subdivisions and from regulated investment companies exempt from federal income tax under the Internal Revenue Code shall be subtracted net of amortization of any discount or premium. In making the adjustment for adjusted current earnings, subtract Foreign Sales Company (FSC) dividend income and Puerto Rican dividend income computed under Internal Revenue Code Section 936 to the extent they are included in the federal computation of adjusted current earnings. Losses to be added are those losses required to be added by Section 58 of the Internal Revenue Code in computing federal alternative minimum taxable income.

a. Tax preference items are:

1. Intangible drilling costs;
2. Incentive stock options;
3. Reserves for losses on bad debts of financial institutions;
4. Appreciated property charitable deductions;
5. Accelerated depreciation or amortization on certain property placed in service before January 1, 1987.

b. Adjustments are:

1. Depreciation;
2. Mining exploration and development;
3. Long-term contracts;
4. Iowa alternative minimum net operating loss deduction;
5. Book income or adjusted earnings and profits.

c. Losses added back are:

1. Farm losses;
2. Passive activity losses.

Computation of Iowa alternative minimum tax net operating loss deduction.

Net operating losses computed under rule 701—53.2(422) carried forward from tax years which begin before January 1, 1987, are deductible without adjustment.

Net operating losses from tax years which begin after December 31, 1986, which are carried back or carried forward to the current tax year shall be reduced by the amount of tax preferences and adjustments taken into account in computing the net operating loss prior to applying rule 701—53.2(422). The deduction for a net operating loss from a tax year beginning after December 31, 1986, which is carried back or carried forward shall not exceed 90 percent of the alternative minimum taxable income computed without regard for the net operating loss deduction.

The exemption amount shall be reduced by 25 percent of the amount that the alternative minimum taxable income computed without regard to the $40,000 exemption exceeds $150,000. The exemption shall not be reduced below zero.

EXAMPLE: The following example shows the computation of the alternative minimum tax when there are net operating loss carryforwards and carrybacks including an alternative minimum tax net operating loss.

For tax year 1987, the following information is available:

Federal taxable income before NOL	$182,000
Federal NOL carryforward	<97,000>
Federal income tax	19,750
Tax preferences and adjustments	48,000
Iowa income tax expensed on federal	2,570
Iowa NOL carryforward	147,000

For tax year 1988, the following information is available:

Federal taxable income before NOL	$<154,000>
Federal income tax refund	15,460
Tax preferences and adjustments	78,000
Iowa income tax refund reported on federal	2,570

The alternative minimum tax for 1987 before the 1988 net operating loss carryback should be computed as follows:

Regular Iowa Tax	
Federal taxable income	$182,000
less 50% federal tax	<9,875>
add Iowa income tax expensed	2,570
Iowa taxable income before NOL carryforward	$174,695
less NOL carryforward	<147,000>
Iowa taxable income	$ 27,695
Iowa income tax	$ 1,716
Alternative Minimum Tax	
Iowa taxable income before NOL	$174,695
add preferences and adjustments	48,000
Total	$222,695
less NOL carryforward*	<147,000>

Iowa alternative taxable income	$ 75,695
less exemption amount	<40,000>
Total	$ 35,695
Times 7.2%	2,570
Less regular tax	<1,715>
Alternative minimum tax	$ 855

*Net operating loss carryforwards from tax years beginning before January 1, 1987, are deductible at 100 percent without reduction for items of tax preference or adjustments arising in the tax year.

The alternative minimum tax for 1987 after the 1988 net operating loss carryback should be computed as follows:

Regular Iowa Tax	
Federal taxable income	$ 182,000
less 50% federal tax	<9,875>
add Iowa income tax expensed	2,570
Iowa taxable income before NOL carryforward	$ 174,695
less NOL carryforward	<147,000>
	$ 27,695
less NOL carryback from 1988[1]	<148,840>
NOL carryforward	$ <121,145>

Alternative Minimum Tax	
Iowa taxable income before NOL	$ 174,695
add preferences and adjustments	48,000
Total	$ 222,695
less NOL carryforward from pre-1987 tax year	<147,000>
Total	$ 75,695
less alternative minimum tax NOL[2]	<68,126>
Total	$ 7,569
less exemption	<40,000>
Alternative minimum taxable income after NOL	$ -0-

[1]Computation of 1988 Iowa NOL

Federal NOL	$<154,000>
add 50% of federal refund	7,730
less Iowa refund in federal income	<2,570>
Iowa NOL	$<148,840>

[2]Computation of 1988 Alternative Minimum Tax NOL

Iowa NOL	$<148,840>
add preferences and adjustments	78,000
Total	$ <70,840>

NOL carryback limited to 90% of alternative minimum income before NOL and exemption*	$ <68,126>
Alternative minimum tax NOL carryforward	$ 2,705

*For purposes of the alternative minimum tax, net operating loss carryforward or carryback from tax years beginning after December 31, 1986, must be reduced by items of tax preference and adjustments, and are limited to 90 percent of alternative minimum taxable income before deduction of the post-1986 NOL and the $40,000 exemption amount ($75,695 × 90% = $68,126).

52.5(3) Effective for tax years beginning on or after January 1, 1986, estimated payments are required for minimum tax.

52.5(4) Alternative minimum tax credit for minimum tax paid in a prior tax year. Minimum tax paid in prior tax years commencing with tax years beginning on or after January 1, 1987, by a taxpayer can be claimed as a tax credit against the taxpayer's regular income tax liability in a subsequent tax year. Therefore, 1988 is the first tax year that the minimum tax credit is available for use and the credit is based on the minimum tax paid by the taxpayer for 1987. However, only the portion of the minimum tax which is attributable to those adjustments and tax preferences which are "deferral items" qualifies for the minimum tax credit for tax years beginning before January 1, 1990. "Deferral items" are those tax preferences and adjustments which result in a temporary change in a taxpayer's tax liability. An example of a "deferral item" is the tax preference for accelerated depreciation of real property placed in service before 1987. On the other hand, the portion of the minimum tax which is attributable to the "exclusion item" for appreciated property charitable deduction does not qualify for the minimum tax credit. The appreciated property charitable deduction tax preference is the only state "exclusion item," although there are several "exclusion items" which are used to compute federal minimum tax. For tax years beginning on or after January 1, 1990, the entire amount of minimum tax paid qualifies for the minimum tax credit, and there is no longer any distinction between "deferral items" and "exclusion items." The minimum tax credit may only be used against regular income tax for a tax year to the extent that the regular tax is greater than the tentative minimum tax for the tax year. If the minimum tax credit is not used up against the regular tax for a tax year the remaining credit is carried to the following tax year to be applied against the regular income tax liability for that period.

a. Computation of minimum tax credit on Form IA 8801C. The minimum tax credit is computed on Form IA 8801C from information on Form IA 4626 for the prior tax year, Form IA 1120 and Form IA 4626 for the current year and from Form IA 8801C for the prior year (applies in 1989 and in subsequent tax years).

Form IA 8801C is in three parts. In the first part, a calculation is made to determine the portion of the minimum tax paid in the prior year, if any, which is attributable to the exclusion item for appreciated property charitable deduction. In the second portion of Form IA 8801C, the minimum tax attributable to the appreciated property charitable deduction from Part I, is subtracted from the total minimum tax paid for the prior year. The remaining amount of minimum tax is attributable to the deferral tax preference items and adjustment items. This remaining amount, if any, is added to the minimum tax carryover credit from the IA 8801C for the prior tax year, if any. This total is compared to the regular income tax liability less the credits set forth in Iowa Code section 422.33, less the tentative minimum tax for the current year and the lesser amount is the allowable minimum tax credit for the current year.

The final part of Form IA 8801C is used to compute the minimum tax credit, if any, which will be carried over to the next tax year. The carryover credit is computed by subtracting the allowable credit for the current tax year from the total of the minimum tax credit attributable to the deferral items and the carryover credit from the prior tax years.

b. EAMPLE. Taxpayer had a 1989 taxable income of $300,000 and an accelerated depreciation tax preference of $80,000. In 1988 the taxpayer had taxable income of $345,000 and tax preferences of $145,000 which consisted of $110,000 of accelerated depreciation and $35,000 of appreciated property charitable deduction. The minimum tax credit for 1989 was computed on Form IA 8801C using data from IA 4626 for 1988 and from IA 4626 for 1989 and IA 1120 for 1989.

Form IA 8801C

Part I.		Computation of Minimum Tax on Exclusion Items	
Line 11	-	Gross tax on exclusion items	-0-
Line 12	-	Less regular tax minus credits	$33,900
Line 13	-	Net minimum tax on exclusion items	-0-
Part II.		Computation of Allowable Credit for 1989	
Line 14	-	Enter amount from line 17 IA 4626 for 1988	$ 1,380
Line 15	-	Enter amount from line 13 part I	-0-
Line 16	-	Subtract line 15 from line 14	$ 1,380
Line 17	-	Enter credit carryforward from 1987	-0-
Line 18	-	Add lines 16 and 17	$ 1,380
Line 19	-	Enter 1989 regular tax liability	$28,500
Line 20	-	Enter 1989 tentative minimum tax	$27,360
Line 21	-	Subtract line 20 from line 19	$ 1,140
Line 22	-	Allowable minimum tax credit for 1989. Enter smaller of line 18 or 21.	$ 1,140
Part III.		Computation of Minimum Tax Credit Carryovers	
Line 23	-	Enter amount from line 18 part II	$ 1,380
Line 24	-	Enter amount from line 22 part II	$ 1,140
Line 25	-	Carryforward of minimum tax credit to 1990. Subtract line 24 from line 23.	$ 240

c. Computation of the minimum tax credit attributable to a member leaving an affiliated group filing a consolidated Iowa corporation income tax return. The amount of minimum tax credit available for carryforward attributable to a member of a consolidated Iowa income tax return shall be computed as follows: The consolidated minimum tax credit available for carryforward from each tax year is multiplied by a fraction, the numerator of which is the separate member's tax preferences and adjustments for the tax year and the denominator of which is the total tax preferences and adjustments of all members of the consolidated Iowa income tax return for the tax year.

d. Computation of the amount of minimum tax credit which may be used by a new member of a consolidated Iowa corporation income tax return. The amount of minimum tax credit carryforward which may be used by a new member of a consolidated Iowa income tax return is limited to the separate member's contribution to the amount by which the regular income tax less credits set forth in Iowa Code section 422.33 exceeds the tentative minimum tax.

The separate member's contribution to the amount by which the regular income tax less nonrefundable credits exceeds the tentative minimum tax shall be computed as follows:

$$\frac{\left[\frac{A}{B} \times C + D\right] \times F}{E} = \text{Separate member's contribution to the amount by which regular income tax less credits set forth in section 422.33 exceeds the tentative minimum tax.}$$

A = Separate corporation gross sales within Iowa after elimination of all intercompany transactions.
B = Consolidated gross sales within and without Iowa after elimination of all intercompany transactions.
C = Iowa consolidated income subject to apportionment.
D = Separate corporation income allocable to Iowa.
E = Iowa consolidated income subject to tax.
F = The amount by which the regular income tax less credits set forth in Iowa Code section 422.33 exceeds the tentative minimum tax.

e. Minimum tax credit after merger. When two or more corporations merge or consolidate into one corporation, the minimum tax credit of the merged or consolidated corporations is available for use by the survivor of the merger or consolidation.

This rule is intended to implement Iowa Code section 422.33.

701—52.6(422) Motor fuel credit. A corporation may elect to receive an income tax credit in lieu of the motor fuel tax refund provided by Iowa Code chapter 452A. A corporation which holds a motor fuel tax refund permit when it makes this election must cancel the permit within 30 days after the first day of the tax year. However, if the refund permit is not canceled within this period, the permit becomes invalid at the time the election to receive an income tax credit is made. The election will continue for subsequent tax years unless a new motor fuel tax refund permit is obtained.

The amount of the income tax credit must be the amount of Iowa motor fuel tax paid on qualifying fuel purchases as determined by Iowa Code chapter 452A and Iowa Code section 422.110 less any state sales tax as determined by 701—subrule 231.2(2). The credit must be claimed on the tax return covering the tax year in which the motor fuel tax was paid. If the motor fuel credit results in an overpayment of income tax, the overpayment may be refunded or may be credited to income tax due in the subsequent tax year.

Shareholders of S corporations may claim an income tax credit on their individual income tax returns for their respective shares of the motor vehicle fuel taxes paid by the corporations. The credit for a shareholder is that person's pro-rata share of the fuel tax paid by the corporation. A schedule must be attached to the individual's return showing the distribution of gallons and the amount of credit claimed by each shareholder.

The corporation must attach to its return a schedule showing the allocation to each shareholder of the motor fuel purchased by the corporation.

This rule is intended to implement Iowa Code section 422.33.

701—52.7(422) Research activities credit. Effective for tax years beginning on or after January 1, 1985, taxpayers are allowed a tax credit equal to 6.5 percent of the state's apportioned share of qualifying expenditures for increasing research activities. For purposes of this credit, "qualifying expenditures" means the qualifying expenditures for increasing research activities as defined for purposes of the federal credit for increasing research activities computed under Section 41 of the Internal Revenue Code. For tax years beginning on or after January 1, 1991, "qualifying expenditures" means the qualifying expenditures for increasing research activities as defined for purposes of the federal credit for increasing research activities computed under Section 41 of the Internal Revenue Code as in effect on January 1, 1998. The Iowa research activities credit is made permanent for tax years beginning on or after January 1, 1991, even though there may no longer be a research activities credit for federal income tax purposes. The "state's apportioned share of qualifying expenditures for increasing research activities" must be the ratio of the qualified expenditures in Iowa to total qualified expenditures times total qualifying expenditures for increasing research activities.

52.7(1) *Qualified expenditures in Iowa are:*

a. Wages for qualified research services performed in Iowa.

b. Cost of supplies used in conducting qualified research in Iowa.

c. Rental or lease cost of personal property used in Iowa in conducting qualified research. Where personal property is used both within and without Iowa in conducting qualified research, the rental or lease cost must be prorated between Iowa and non-Iowa use by the ratio of days used in Iowa to total days used both within and without Iowa.

d. Sixty-five percent of contract expenses paid by a corporation to a qualified organization for basic research performed in Iowa.

52.7(2) *Total qualified expenditures are:*

a. Wages paid for qualified research services performed everywhere.

b. Cost of supplies used in conducting qualified research everywhere.

c. Rental or lease cost of personal property used in conducting qualified research everywhere.

d. Sixty-five percent of contract expenses paid by a corporation to a qualified organization for basic research performed everywhere.

Qualifying expenditures for increasing research activities is the smallest of the amount by which the qualified research expenses for the taxable year exceed the base period research expenses or 50 percent of the qualified research expenses for the taxable year.

A shareholder in an S corporation may claim the pro-rata share of the Iowa credit for increasing research expenditures on the shareholder's individual income tax return. The S corporation must provide each shareholder with a schedule showing the computation of the corporation's Iowa credit for increasing research expenditures and the shareholder's pro-rata share. The shareholder's pro-rata share of the Iowa credit for increasing research activities must be in the same ratio as the shareholder's pro-rata share in the earnings of the S corporation.

Any research credit in excess of the corporation's tax liability less the credits authorized in Iowa Code sections 422.33, 422.91 and 422.111 may be refunded to the taxpayer or credited to the estimated tax of the taxpayer for the following year.

52.7(3) *Research activities credit for tax years beginning in 2000.* Effective for tax years beginning on or after January 1, 2000, the taxes imposed for corporate income tax purposes will be reduced by a tax credit for increasing research activities.

a. The credit equals the sum of the following:

(1) Six and one-half percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

(2) Six and one-half percent of the basic research payments determined under Section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to total qualified research expenditures.

b. In lieu of the credit computed under paragraph *"a"* of this subrule, a taxpayer may elect to compute the credit amount for qualified research expenses incurred in this state in a manner consistent with the alternative incremental credit described in Section 41(c)(4) of the Internal Revenue Code. The taxpayer may make this election regardless of the method used by the taxpayer on the taxpayer's federal income tax return. The election made under this paragraph is for the tax year and the taxpayer may use another method or this same method for any subsequent tax year.

For purposes of this alternative research credit computation, the credit percentages applicable to qualified research expenses described in clauses (i), (ii), and (iii) of Section 41(c)(4)(A) of the Internal Revenue Code are 1.65 percent, 2.20 percent, and 2.75 percent, respectively.

c. For purposes of this subrule, the terms "base amount," "basic research payment," and "qualified research expense" mean the same as defined for the federal credit for increasing research activities under Section 41 of the Internal Revenue Code, except that, for purposes of the alternative incremental credit described in paragraph *"b"* of this subrule, such amounts are limited to research activities conducted within this state. For purposes of this rule, "Internal Revenue Code" means the Internal Revenue Code in effect on January 1, 2008.

d. A shareholder in an S corporation may claim the pro-rata share of the Iowa credit for increasing research activities on the shareholder's individual return. The S corporation must provide each shareholder with a schedule showing the computation of the corporation's Iowa credit for increasing research activities and the shareholder's pro-rata share. The shareholder's pro-rata share of the Iowa credit for increasing research activities must be in the same ratio as the shareholder's pro-rata share in the earnings of the S corporation.

Any research credit in excess of the corporation's tax liability less the credits authorized in Iowa Code sections 422.33, 422.91 and 422.111 may be refunded to the taxpayer or credited to the estimated tax of the corporation for the following year.

52.7(4) *Research activities credit for an eligible business.* Effective for tax years beginning on or after January 1, 2000, an eligible business may claim a tax credit for increasing research activities in this state during the period the eligible business is participating in the new jobs and income program with the Iowa department of economic development. An eligible business must meet all the conditions listed under Iowa Code section 15.329, which include requirements to make an investment of $10 million as indexed for inflation and the creation of a minimum of 50 full-time positions. The research credit authorized in this subrule is in addition to the research activities credit described in 701—subrule 42.2(11) or the research credit described in subrule 52.7(3).

a. The additional research activities credit for an eligible business is computed under the criteria for computing the research activities credit under 701—subrule 42.2(11) or under subrule 52.7(3), depending on which of those subrules the initial research credit was computed. The same qualified research expenses and basic research expenses apply in computation of the research credit for an eligible business as were applicable in computing the credit in 701—subrule 42.2(11) or 52.7(3). In addition, if the alternative incremental credit method was used to compute the initial research credit under 701—subrule 42.2(11) or 52.7(3), that method would be used to compute the research credit for an eligible business. Therefore, if a taxpayer that met the qualifications of an eligible business had a research activities credit of $200,000 as computed under subrule 52.7(3), the research activities credit for the eligible business would result in an additional credit for the taxpayer of $200,000.

b. If the eligible business is a partnership, S corporation, limited liability company, estate or trust where the income from the eligible business is taxed to the individual owners of the business, these individual owners may claim the additional research activities credit allowed to the eligible business. The research credit is allocated to each of the individual owners of the eligible business on the basis of the pro-rata share of that individual's earnings from the eligible business.

52.7(5) *Corporate tax research credit for increasing research activities within a quality jobs enterprise zone.* Effective for tax years beginning on or after January 1, 2000, the taxes imposed for corporate income tax purposes will be reduced by a tax credit for increasing research activities within an area designated as a quality jobs enterprise zone. This credit for increasing research activities is in lieu of the research activities credit described in 701—subrule 42.2(11) or the research activities credit described in subrule 52.7(3).

a. The credit equals the sum of the following:

(1) Thirteen percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state's apportioned share of the qualifying expenditures for research activities.

(2) Thirteen percent of the basic research payments determined under Section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities. The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in the quality jobs enterprise zone to total qualified research expenditures.

b. In lieu of the credit computed under paragraph *"a"* of this subrule, a taxpayer may elect to compute the credit amount for qualified research expenses incurred in the quality jobs enterprise zone in a manner consistent with the alternative incremental credit described in Section 41(c)(4) of the Internal Revenue Code. The taxpayer may make this election regardless of the method used by the taxpayer on the taxpayer's federal income tax return. The election made under this paragraph is for the tax year and the taxpayer may use another method or this same method for any subsequent tax year. For purposes of this alternative research credit computation, the credit percentages applicable to qualified research expenses described in clauses (i), (ii), and (iii) of Section 41(c)(4)(A) of the Internal Revenue Code are 3.30 percent, 4.40 percent, and 5.50 percent, respectively.

c. For purposes of this subrule, the terms "base amount," "basic research payment," and "qualified research expense" mean the same as defined for the federal credit for increasing research activities under Section 41 of the Internal Revenue Code, except that, for purposes of the alternative incremental credit described in subrule 52.7(3) of this rule, such amounts are limited to research activities conducted within

the quality jobs enterprise zone. For purposes of this rule, "Internal Revenue Code" means the Internal Revenue Code in effect on January 1, 2008.

d. Any research credit in excess of the corporation's tax liability for the taxable year may be refunded to the taxpayer or credited to the corporation's tax liability for the following year.

This rule is intended to implement Iowa Code section 422.33 as amended by 2008 Iowa Acts, Senate File 2123.

701—52.8(422) New jobs credit. A tax credit is available to a corporation which has entered into an agreement under Iowa Code chapter 260E and has increased employment by at least 10 percent.

52.8(1) *Definitions.*

a. The term *"new jobs"* means those jobs directly resulting from a project covered by an agreement authorized by Iowa Code chapter 260E (Iowa Industrial New Jobs Training Act) but does not include jobs of recalled workers or replacement jobs or other jobs that formerly existed in the industry in the state.

b. The term *"jobs directly related to new jobs"* means those jobs which directly support the new jobs but does not include in-state employees transferred to a position which would be considered to be a job directly related to new jobs unless the transferred employee's vacant position is filled by a new employee.

EXAMPLE A. A taxpayer who has entered into a chapter 260E agreement to train new employees for a new product line transfers an in-state employee to be supervisor of the new product line but does not fill the transferred employee's position. The new supervisor's position would not be considered a job directly related to new jobs even though it directly supports the new jobs because the transferred employee's old position was not refilled.

EXAMPLE B. A taxpayer who has entered into a chapter 260E agreement to train new employees for a new product line transfers an in-state employee to be supervisor of the new product line and fills the transferred employee's position with a new employee. The new supervisor's position would be considered a job directly related to new jobs because it directly supports the new jobs and the transferred employee's old position was filled by a new employee.

The burden of proof that a job is directly related to new jobs is on the taxpayer.

c. The term *"taxable wages"* means those wages upon which an employer is required to contribute to the state unemployment fund as defined in Iowa Code subsection 96.19(37) for the year in which the taxpayer elects to take the new jobs tax credit. For fiscal-year taxpayers, "taxable wages" shall not be greater than the maximum wage upon which an employer is required to contribute to the state unemployment fund for the calendar year in which the taxpayer's fiscal year begins.

d. The term *"agreement"* means an agreement entered into under Iowa Code chapter 260E after July 1, 1985, an amendment to that agreement, or an amendment to an agreement entered into before July 1, 1985, if the amendment sets forth the base employment level as of the date of the amendment. The term "agreement" also includes a preliminary agreement entered into under Iowa Code chapter 260E provided the preliminary agreement contains all the elements of a contract and includes the necessary elements and commitment relating to training programs and new jobs.

e. The term *"base employment level"* means the number of full-time jobs an industry employs at a plant site which is covered by an agreement under chapter 260E on the date of the agreement.

f. The term *"project"* means a training arrangement which is the subject of an agreement entered into under Iowa Code chapter 260E.

g. The term *"industry"* means a business engaged in interstate or intrastate commerce for the purpose of manufacturing, processing, or assembling products, conducting research and development, or providing services in interstate commerce, but excludes retail, health or professional services. Industry does not include a business which closes or substantially reduces its operations in one area of the state and relocates substantially the same operation in another area of the state. Industry is a business engaged in the above listed activities rather than the generic definition encompassing all businesses in the state engaged in the same activities. For example, in the meat-packing business, an industry is considered

to be a single corporate entity or operating division, rather than the entire meat-packing business in the state.

h. The term *"new employees"* means the same as new jobs or jobs directly related to new jobs.

i. The term *"full-time job*" means any of the following:

(1) An employment position requiring an average work week of 35 or more hours;

(2) An employment position for which compensation is paid on a salaried full-time basis without regard to hours worked; or

(3) An aggregation of any number of part-time or job-sharing employment positions which equal one full-time employment position. For purposes of this subrule each part-time or job-sharing employment position shall be categorized with regard to the average number of hours worked each week as one-quarter, half, three-quarters, or full-time position, as set forth in the following table:

Average Number of Weekly Hours	Category
More than 0 but less than 15	¼
15 or more but less than 25	½
25 or more but less than 35	¾
35 or more	1 (full-time)

52.8(2) *How to compute the credit.* The credit is 6 percent of the taxable wages paid to employees in new jobs or jobs directly related to new jobs for the taxable year in which the taxpayer elects to take the credit.

EXAMPLE 1. A taxpayer enters into an agreement to increase employment by 20 new employees which is greater than 10 percent of the taxpayer's base employment level of 100 employees. In year one of the agreement the taxpayer hires 20 new employees but elects not to take the credit in that year. In year two of the agreement only 18 of the new employees hired in year one are still employed and the taxpayer elects to take the credit. The credit would be 6 percent of the taxable wages of the 18 remaining new employees. In year three of the agreement the taxpayer hires two additional new employees under the agreement to replace the two employees which left in year two and elects to take the credit. The credit would be 6 percent of the taxable wages paid to the two replacement employees. In year four of the agreement three of the employees for which a credit had been taken left employment and three additional employees were hired. No credit is available for these employees. A credit can only be taken one time for each new job or job directly related to a new job.

EXAMPLE 2. A taxpayer operating two plants in Iowa enters into a chapter 260E agreement to train new employees for a new product line at one of the taxpayer's plants. The base employment level on the date of the agreement at plant A is 300 and at plant B is 100. Under the agreement 20 new employees will be trained for plant B which is greater than a 10 percent increase of the base employment level for plant B. In the year in which the taxpayer elects to take the credit, the employment level at plant A is 290 and at plant B is 120. The credit would be 6 percent of the wages of 10 new employees at plant B as 10 new jobs were created by the industry in the state. A credit for the remaining 10 employees can be taken if the employment level at plant A increases back to 300 during the period of time that the credit can be taken.

52.8(3) *When the credit can be taken.* The taxpayer may elect to take the credit in any tax year which either begins or ends during the period beginning with the date of the agreement and ending with the date by which the project is to be completed under the agreement. However, the taxpayer may not take the credit until the base employment level has been exceeded by at least 10 percent.

EXAMPLE: A taxpayer enters into an agreement to increase employment from a base employment level of 200 employees to 225 employees. In year one of the agreement the taxpayer hires 20 new employees which is a 10 percent increase over the base employment level but elects not to take the credit. In year two of the agreement 2 of the new employees leave employment. The taxpayer elects to take the credit which would be 6 percent of the taxable wages of the 18 employees currently employed. In year three the taxpayer hires 7 new employees and elects to take the credit. The credit would be 6 percent of the taxable wages of the seven new employees.

A shareholder in an S corporation may claim the pro-rata share of the Iowa new jobs credit on the shareholder's individual tax return. The S corporation shall provide each shareholder with a schedule showing the computation of the corporation's Iowa new jobs credit and the shareholder's pro-rata share. The shareholder's pro-rata share of the Iowa new jobs credit shall be in the same ratio as the shareholder's pro-rata share in the earnings of the S corporation. All shareholders of an S corporation shall elect to take the Iowa new jobs credit the same year.

Any new jobs credit in excess of the corporation's tax liability less the credits authorized in Iowa Code sections 422.33, 422.91, and 422.110 may be carried forward for ten years or until it is used, whichever is the earliest.

This rule is intended to implement Iowa Code section 422.33.

701—52.9(422) Seed capital income tax credit. Rescinded IAB 3/6/02, effective 4/10/02.

701—52.10(15) New jobs and income program tax credits. For tax years ending after May 1, 1994, for programs approved after May 1, 1994, but before July 1, 2005, an investment tax credit under Iowa Code section 15.333 and an additional research activities credit under Iowa Code section 15.335 are available to an eligible business. The new jobs and income program was repealed on July 1, 2005, and has been replaced with the high quality job creation program. See rule 701—52.28(15) for information on the investment tax credit and additional research activities credit under the high quality job creation program. Any investment tax credit and additional research activities credit earned by businesses approved under the new jobs and income program prior to July 1, 2005, remains valid, and can be claimed on tax returns filed after July 1, 2005.

52.10(1) *Definitions:*

a. *"Eligible business"* means a business meeting the conditions of Iowa Code section 15.329.

b. *"Improvements to real property"* includes the cost of utility lines, drilling wells, construction of sewage lagoons, parking lots and permanent structures. The term does not include temporary structures.

c. *"Machinery and equipment"* means machinery used in manufacturing establishments and computers except point-of-sale equipment as defined in Iowa Code section 427A.1. The term does not include computer software.

d. *"New investment directly related to new jobs created by the location or expansion of an eligible business under the program"* means the cost of machinery and equipment purchased for use in the operation of the eligible business which has been depreciated in accordance with generally accepted accounting principles and the cost of improvements to real property.

For the cost of improvements to real property to be eligible for an investment tax credit, the improvements to real property must have received an exemption from property taxes under Iowa Code section 15.332. Replacement machinery and equipment and additional improvements to real property placed in service during the period of property tax exemption by an eligible business qualify for an investment tax credit.

For tax years beginning on or after January 1, 2001, the requirement that the improvements to real property must have received an exemption from property taxes under Iowa Code section 15.332 has been eliminated.

52.10(2) *Investment tax credit.* An investment tax credit of up to 10 percent of the new investment which is directly related to new jobs created by the location or expansion of an eligible business is available. The credit is available for machinery and equipment or improvements to real property placed in service after May 1, 1994. The credit is to be taken in the year the qualifying asset is placed in service. For business applications received on or after July 1, 1999, for purposes of the investment tax credit claimed under Iowa Code section 15.333, the cost of land and any buildings and structures located on the land will be considered to be a new investment which is directly related to new jobs for purposes of determining the amount of new investment upon which an investment tax credit may be taken.

For eligible businesses approved by the Iowa department of economic development on or after March 17, 2004, certain lease payments made by eligible businesses to a third-party developer will be considered to be new investment for purposes of computing the investment tax credit. The eligible business shall

enter into a lease agreement with the third-party developer for a minimum of ten years. The investment tax credit is based on the annual base rent paid to a third-party developer by the eligible business for a period not to exceed ten years. The total costs of the annual base rent payments for the ten-year period cannot exceed the cost of the land and the third-party developer's cost to build or renovate the building used by the eligible business. The annual base rent is defined as the total lease payment less taxes, insurance and operating and maintenance expenses.

If an eligible business fails to maintain the requirements of the new jobs and income program, the taxpayer may be required to repay all or a portion of the tax incentives taken on Iowa returns. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the tax credits may have expired, the department may proceed to collect the tax incentives forfeited by failure to maintain the requirements of the new jobs and income program because this is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability.

If the eligible business, within five years of purchase, sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which tax credit was claimed under this subrule, the income tax liability of the eligible business for the year in which all or part of the property is sold, disposed of, razed, or otherwise rendered unusable shall be increased by one of the following amounts:

a. One hundred percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within one full year after being placed in service.

b. Eighty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within two full years after being placed in service.

c. Sixty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within three full years after being placed in service.

d. Forty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within four full years after being placed in service.

e. Twenty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within five full years after being placed in service.

Any credit in excess of the tax liability for the tax year may be carried forward seven years or until used, whichever is the earlier.

If the business is a partnership, S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

52.10(3) *Research activities credit.* An additional research activities credit of 6½ percent of the state's apportioned share of "qualifying expenditures" is available to an eligible business. The credit is available for qualifying expenditures incurred after May 1, 1994. The additional research activities credit is in addition to the credit set forth in Iowa Code section 422.33(5).

See rule 701—52.7(422) for the computation of the research activities credit.

See also subrule 52.7(3) for the computation of the research activities credit for tax years beginning on or after January 1, 2000, and subrule 52.7(4) for the research activities credit for an eligible business for tax years beginning on or after January 1, 2000.

Any credit in excess of the tax liability for the tax year may be carried forward seven years or until used, whichever is the earlier. This is in contrast to the research activities credit in Iowa Code section 422.33(5) where any credit in excess of the tax liability for the tax year may be carried forward until used or refunded. For tax years ending on or after July 1, 1996, the additional research activities credit may at the option of the taxpayer be refunded.

If the business is a partnership, S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

52.10(4) *Investment tax credit—value-added agricultural products.* For tax years beginning on or after July 1, 2001, an eligible business whose project primarily involves the production of value-added

agricultural products may elect to receive a refund for all or a portion of an unused investment credit. For tax years beginning on or after July 1, 2001, but before July 1, 2003, an eligible business includes a cooperative described in Section 521 of the Internal Revenue Code which is not required to file an Iowa corporation tax return, and whose project primarily involves the production of ethanol. For tax years beginning on or after July 1, 2003, an eligible business includes a cooperative described in Section 521 of the Internal Revenue Code which is not required to file an Iowa corporation income tax return.

Eligible businesses that elect to receive a refund shall apply to the Iowa department of economic development for tax credit certificates between May 1 and May 15 of each fiscal year. Only those businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. The Iowa department of economic development will not issue tax credit certificates for more than $4 million during a fiscal year. If applications are received for more than $4 million, the applicants shall receive certificates for a prorated amount.

The Iowa department of economic development will issue tax credit certificates within a reasonable period of time. Tax credit certificates are valid for the tax year following project completion. The tax credit certificate must be attached to the tax return for the tax year during which the tax credit is claimed. The tax credit certificate shall not be transferred, except for a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return and whose project primarily involves the production of ethanol for tax years beginning on or after January 1, 2002, or for a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return for tax years beginning on or after July 1, 2003.

For value-added agricultural projects for cooperatives that are not required to file an Iowa income tax return because they are exempt from federal income tax, the cooperative must submit a list of its members and the share of each member's interest in the cooperative. The Iowa department of economic development will issue a tax credit certificate to each member on the list.

For tax years beginning on or after January 1, 2002, but before July 1, 2003, a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return and whose project primarily involves the production of ethanol may elect to transfer all or a portion of its tax credit to its members. For tax years beginning on or after July 1, 2003, a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return may elect to transfer all or a portion of its tax credit to its members. The amount of tax credit transferred and claimed by a member shall be based upon the pro-rata share of the member's earnings in the cooperative. The Iowa department of economic development will issue a tax credit certificate to each member of the cooperative to whom the credit was transferred provided that tax credit certificates which total no more than $4 million are issued during a fiscal year.

The following nonexclusive examples illustrate how this subrule applies:

EXAMPLE 1. Corporation A completes a value-added agricultural project in October 2001 and has an investment tax credit of $1 million. Corporation A is required to file an Iowa income tax return but expects no tax liability for the year ending December 31, 2001. Thus, Corporation A applies for a tax credit certificate for the entire unused credit of $1 million in May 2002. The entire $1 million is approved by the Iowa department of economic development, so the tax credit certificate is attached to the tax return for the year ending December 31, 2002. Corporation A will request a refund of $1 million on this tax return.

EXAMPLE 2. Corporation B completes a value-added agricultural project in October 2001 and has an investment tax credit of $1 million. Corporation B is required to file an Iowa income tax return but expects no tax liability for the year ending December 31, 2001. Thus, Corporation B applies for a tax credit of $1 million in May 2002. Due to the proration of available credits, Corporation B is awarded a tax credit certificate for $400,000. The tax credit certificate is attached to the tax return for the year ending December 31, 2002. Corporation B will request a refund of $400,000 on this tax return. The remaining $600,000 of unused credit can be carried forward for the following seven tax years or until the credit is depleted, whichever occurs first. If Corporation B expects no tax liability for the tax period ending December 31, 2002, Corporation B may apply for a tax credit certificate in May 2003 for this $600,000 amount.

EXAMPLE 3. Corporation C completes a value-added agricultural project in March 2002 and has an investment tax credit of $1 million. Corporation C is required to file an Iowa income tax return and expects a tax liability of $200,000 for the tax period ending December 31, 2002. Thus, Corporation C applies for a tax credit certificate for the unused credit of $800,000 in May 2002. A tax credit certificate is awarded for the entire $800,000. The tax credit certificate for $800,000 shall be attached to the tax return for the period ending December 31, 2003, since the certificate is not valid until the year following the project's completion. The tax return for the period ending December 31, 2002, reports a tax liability of $150,000. The investment credit is limited to $150,000 for the period ending December 31, 2002, and the remaining $50,000 can be carried forward for the following seven tax years.

EXAMPLE 4. Corporation D is a cooperative described in Section 521 of the Internal Revenue Code that completes a project involving ethanol in August 2002. Corporation D has an investment tax credit of $500,000. Corporation D is not required to file an Iowa income tax return because Corporation D is exempt from federal income tax. When filing for the tax credit certificate in May 2003 for the $500,000 unused credit, Corporation D must attach a list of its members and the share of each member's interest in the cooperative. The Iowa department of economic development will issue tax credit certificates to each member on the list based on each member's interest in the cooperative. The members can attach the tax credit certificate to their Iowa income tax returns for the year ending December 31, 2003, since the certificate is not valid until the year following project completion.

EXAMPLE 5. Corporation E is a cooperative described in Section 521 of the Internal Revenue Code that completes a project involving ethanol in August 2002. Corporation E has an investment tax credit of $500,000. Corporation E is required to file an Iowa income tax return because Corporation E is not exempt from federal income tax. Corporation E expects a tax liability of $100,000 on its Iowa income tax return for the year ending December 31, 2002. Corporation E applies for a tax credit certificate for the unused credit of $400,000 and elects to transfer the $400,000 unused credit to its members. When applying for the tax credit certificate in May 2003, Corporation E must provide a list of its members and the pro rata share of each member's earnings in the cooperative. The Iowa department of economic development will issue tax credit certificates to each member of the cooperative. The members can attach the tax credit certificate to their Iowa income tax returns for the year ending December 31, 2003, since the certificate is not valid until the year following project completion.

EXAMPLE 6. Corporation F is a cooperative described in Section 521 of the Internal Revenue Code that completes a project involving ethanol in August 2002. Corporation F is a limited liability company that files a partnership return for federal income tax purposes. Corporation F is required to file an Iowa partnership return because Corporation F is not exempt from federal income tax. Corporation F has an investment tax credit of $500,000 which must be claimed by the individual partners of the partnership based on their pro-rata share of individual earnings of the partnership. Corporation F expects a tax liability of $200,000 for the individual partners. Corporation F may apply for a tax credit certificate in May 2003 for the unused credit of $300,000. Corporation F must list the names of each partner and the ownership interest of each partner in order to allocate the investment credit for each partner. The tax credit certificate may be claimed on the partner's Iowa income tax return for the period ending December 31, 2003.

52.10(5) *Corporate tax credit—certain sales taxes paid by developer.* For eligible businesses approved by the Iowa department of economic development on or after March 17, 2004, the eligible business may claim a corporate tax credit for certain sales taxes paid by a third-party developer.

a. Sales taxes eligible for the credit. The sales taxes paid by the third-party developer which are eligible for this credit include the following:

(1) Iowa sales and use tax for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered to, furnished to or performed for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility within the economic development area.

(2) Iowa sales and use tax paid for racks, shelving, and conveyor equipment to be used in a warehouse or distribution center within the economic development area.

Any Iowa sales and use tax paid relating to intangible property, furniture and other furnishings is not eligible for the corporate tax credit.

b. How to claim the credit. The third-party developer must provide to the Iowa department of economic development the amount of Iowa sales and use tax paid as described in paragraph *"a."* The amount of Iowa sales and use tax attributable to racks, shelving, and conveyor equipment must be identified separately.

The Iowa department of economic development will issue a tax credit certificate to the eligible business equal to the Iowa sales and use tax paid by the third-party developer for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered to, furnished to or performed for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility. In addition, the Iowa department of economic development will also issue a separate tax credit certificate to the eligible business equal to the Iowa sales and use tax paid by the third-party developer for racks, shelving, and conveyor equipment to be used in a warehouse or distribution center.

The tax credit certificate shall contain the name, address, and tax identification number of the eligible business, along with the amount of the tax credit and the year in which the tax credit can be claimed. The tax credit certificate must be attached to the taxpayer's income tax return for the tax year for which the tax credit is claimed. Any tax credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following seven years or until it is used, whichever is the earlier.

For the tax credit certificate relating to Iowa sales and use tax paid by the third-party developer for racks, shelving, and conveyor equipment, the aggregate amount of tax credit certificates and tax refunds for Iowa sales and use tax paid for racks, shelving, and conveyor equipment to eligible businesses under the new jobs and income program, enterprise zone program and new capital investment program cannot exceed $500,000 in a fiscal year. The requests for tax credit certificates or refunds will be processed in the order they are received on a first-come, first-served basis until the amount of credits authorized for issuance has been exhausted. If applications for tax credit certificates or refunds exceed the $500,000 limitation for any fiscal year, the applications shall be considered in succeeding fiscal years.

This rule is intended to implement Iowa Code sections 15.331C, 15.333 and 15.335.

701—52.11(422) Refunds and overpayments.

52.11(1) to **52.11(6)** Reserved.

52.11(7) *Computation of interest on refunds resulting from net operating losses or net capital losses for tax years or periods beginning on or after January 1, 1974.* Rescinded IAB 11/24/04, effective 12/29/04.

52.11(8) *Computation of interest on refunds resulting from net operating losses or net capital losses for tax years or periods beginning on or after January 1, 1974, and ending on or after July 1, 1980.* Rescinded IAB 11/24/04, effective 12/29/04.

52.11(9) *Computation of interest on refunds resulting from net operating losses or net capital losses for tax years ending on or after April 30, 1981.* Rescinded IAB 11/24/04, effective 12/29/04.

52.11(10) *For refund claims received by the department after June 11, 1984.* If the amount of tax is reduced as a result of a net operating loss or net capital loss, interest shall accrue on the refund resulting from the loss carryback beginning on the date a claim for refund or amended return carrying back the net operating loss or net capital loss is filed with the department or the first day of the second calendar month following the actual payment date, whichever is later.

52.11(11) *Overpayment—interest accruing before July 1, 1980.* Rescinded IAB 11/24/04, effective 12/29/04.

52.11(12) *Interest commencing on or after January 1, 1982.* See rule 701—10.2(421) regarding the rate of interest charged by the department on delinquent taxes and the rate paid by the department on refunds commencing on or after January 1, 1982.

52.11(13) *Overpayment—interest accruing on or after July 1, 1980, and before April 30, 1981.* Rescinded IAB 11/24/04, effective 12/29/04.

52.11(14) *Overpayment—interest accruing on overpayments resulting from returns due on or after April 30, 1981.* If the amount of tax determined to be due by the department is less than the amount paid, the excess to be refunded will accrue interest from the first day of the second calendar month following the date of payment or the date the return was due to be filed or was filed, whichever is the later.

This rule is intended to implement Iowa Code section 422.25.

701—52.12(422) Deduction of credits. The credits against computed tax set forth in Iowa Code sections 422.33 and 422.110 shall be deducted in the following sequence.

1. Franchise tax credit.
2. Venture capital credits.
3. Endow Iowa tax credit.
4. Agricultural assets transfer tax credit.
5. Film qualified expenditure tax credit.
6. Film investment tax credit.
7. Investment tax credit.
8. Wind energy production tax credit.
9. Renewable energy tax credit.
10. New jobs credit.
11. Economic development region revolving fund tax credit.
12. Charitable conservation contribution tax credit.
13. Alternative minimum tax credit.
14. Historic preservation and cultural and entertainment district tax credit.
15. Corporate tax credit for certain sales tax paid by developer.
16. Ethanol blended gasoline tax credit or ethanol promotion tax credit.
17. Research activities credit.
18. Assistive device credit.
19. Motor fuel credit.
20. Wage-benefits tax credit.
21. Soy-based cutting tool oil tax credit.
22. Refundable portion of investment tax credit, as provided in subrule 52.10(4).
23. E-85 gasoline promotion tax credit.
24. Biodiesel blended fuel tax credit.
25. Soy-based transformer fluid tax credit.
26. Estimated tax and payments with vouchers.

This rule is intended to implement Iowa Code sections 15.333, 15.335, 422.33, 422.91 and 422.110.

701—52.13(422) Livestock production credits. For rules relating to the livestock production income tax credit refunds see rule 701—43.8(422).

This rule is intended to implement 1996 Iowa Acts, chapter 1197, sections 19, 20, and 21.

701—52.14(15E) Enterprise zone tax credits. For tax years ending after July 1, 1997, for programs approved after July 1, 1997, a business which qualifies under the enterprise zone program is eligible to receive tax credits. An eligible business under the enterprise zone program must be approved by the Iowa department of economic development and meet the requirements of Iowa Code section 15E.193. The administrative rules for the enterprise zone program for the Iowa department of economic development may be found at 261—Chapter 59.

52.14(1) *Supplemental new jobs credit from withholding.* An eligible business approved under the enterprise zone program is allowed the supplemental new jobs credit from withholding as provided in 701—subrule 46.9(1).

52.14(2) *Investment tax credit.* An eligible business approved under the enterprise zone program is allowed an investment tax credit of up to 10 percent of the new investment which is directly related to new jobs created by the location or expansion of the eligible business.

The provisions under the new jobs and income program for the investment tax credit described in rule 701—52.10(15) are applicable to the enterprise zone program with the following exceptions:

a. The corporate tax credit for certain sales taxes paid by a developer described in subrule 52.10(5) does not apply for the enterprise zone program.

b. For projects approved on or after July 1, 2005, under the enterprise zone program, the investment tax credit will be amortized over a five-year period, as described in subrule 52.28(2).

c. For tax years ending on or after July 1, 2005, an eligible business approved under the enterprise zone program whose project primarily involves biotechnology-related processes may elect to receive a refund for all or a portion of an unused investment credit as described in subrule 52.10(4).

52.14(3) *Research activities credit.* An eligible business approved under the enterprise zone program is eligible for an additional research activities credit as described in subrule 52.7(5).

For tax years ending on or after July 1, 2005, for eligible businesses approved under the enterprise zone program, research activities allowable for the Iowa research activities credit include expenses related to the development and deployment of innovative renewable energy generation components manufactured or assembled in Iowa; such expenses related to the development and deployment of innovative renewable energy generation components are not eligible for the federal credit for increasing research activities. For purposes of this subrule, innovative renewable energy generation components do not include components with more than 200 megawatts in installed effective nameplate capacity. The research activities credit related to renewable energy generation components under the enterprise zone program and the high quality job creation program described in subrule 52.28(1) shall not exceed $1 million in the aggregate.

These expenses related to the development and deployment of innovative renewable energy generation components are applicable only to the additional research activities credit set forth in subrule 52.7(5) for businesses in enterprise zones and the additional research activities credit set forth in subrule 52.28(1) for businesses approved under the high quality job creation program, and are not applicable to the research activities credit set forth in subrule 52.7(3).

52.14(4) *Repayment of incentives.* Effective July 1, 2003, eligible businesses in an enterprise zone may be required to repay all or a portion of the tax incentives received on Iowa returns if the eligible business experiences a layoff of employees in Iowa or closes any of its facilities in Iowa.

This rule is intended to implement Iowa Code section 15E.193 and Supplement section 15E.196.

701—52.15(15E) Eligible housing business tax credit. A corporation which qualifies as an eligible housing business may receive a tax credit of up to 10 percent of the new investment which is directly related to the building or rehabilitating of homes in an enterprise zone. The tax credit may be taken on the tax return for the tax year in which the home is ready for occupancy.

An eligible housing business is one which meets the criteria in Iowa Code section 15E.193B.

52.15(1) *Computation of tax credit.* New investment which is directly related to the building or rehabilitating of homes includes but is not limited to the following costs: land, surveying, architectural services, building permits, inspections, interest on a construction loan, building materials, roofing, plumbing materials, electrical materials, amounts paid to subcontractors for labor and materials provided, concrete, labor, landscaping, appliances normally provided with a new home, heating and cooling equipment, millwork, drywall and drywall materials, nails, bolts, screws, and floor coverings.

New investment does not include the machinery, equipment, hand or power tools necessary to build or rehabilitate homes.

A taxpayer may claim on the taxpayer's corporation income tax return the pro-rata share of the Iowa eligible housing business tax credit from a partnership, limited liability company, estate, or trust. The portion of the credit claimed by the taxpayer shall be in the same ratio as the taxpayer's pro-rata share of the earnings of the partnership, limited liability company, or estate or trust, except for projects beginning on or after July 1, 2005, which used low-income housing credits authorized under Section 42 of the Internal Revenue Code to assist in the financing of the housing development. For these projects, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder.

Any Iowa eligible housing business tax credit in excess of the corporation's tax liability may be carried forward for seven years or until it is used, whichever is the earlier.

If the eligible housing business fails to maintain the requirements of Iowa Code section 15E.193B, to be an eligible housing business, the taxpayer may be required to repay all or a part of the tax incentives the business received. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the income tax credit may have expired, the department may proceed to collect the tax incentives forfeited by failure to maintain the requirements of Iowa Code section 15E.193B. This is because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability.

Prior to January 1, 2001, the tax credit cannot exceed 10 percent of $120,000 for each home or individual unit in a multiple dwelling unit building. Effective January 1, 2001, the tax credit cannot exceed 10 percent of $140,000 for each home or individual unit in a multiple dwelling unit building.

Effective for tax periods beginning on or after January 1, 2003, the taxpayer must receive a tax credit certificate from the Iowa department of economic development to claim the eligible housing business tax credit. The tax credit certificate shall include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the date the project was completed, the amount of the eligible housing business tax credit and the tax year for which the credit may be claimed. In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 52.15(2). The tax credit certificate must be attached to the income tax return for the tax period in which the home is ready for occupancy. The administrative rules for the eligible housing business tax credit for the Iowa department of economic development may be found under 261—Chapter 59.

52.15(2) *Transfer of the eligible housing business tax credit.* For tax periods beginning on or after January 1, 2003, the eligible housing business tax credit certificates may be transferred to any person or entity if low-income housing tax credits authorized under Section 42 of the Internal Revenue Code are used to assist in the financing of the housing development. In addition, the eligible housing business tax credit certificates may be transferred to any person or entity for projects beginning on or after July 1, 2005, if the housing development is located in a brownfield site as defined in Iowa Code section 15.291, or if the housing development is located in a blighted area as defined in Iowa Code section 403.17. No more than $3 million of tax credits for housing developments located in brownfield sites or blighted areas may be transferred in a calendar year, with no more than $1.5 million being transferred for any one eligible housing business in a calendar year.

Within 90 days of transfer of the tax credit certificate for transfers prior to July 1, 2006, the transferee must submit the transferred tax credit certificate to the Iowa department of economic development, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. For transfers on or after July 1, 2006, the transferee must submit the transferred tax credit certificate to the department of revenue. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee for transfers prior to July 1, 2006, the Iowa department of economic development will issue a replacement tax credit certificate to the transferee. For transfers on or after July 1, 2006, the department of revenue will issue the replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the housing business tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The replacement tax credit certificate must contain the same information that was on the original certificate and must have the same expiration date as the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax period for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

This rule is intended to implement Iowa Code Supplement section 15E.193B as amended by 2006 Iowa Acts, chapter 1158.

701—52.16(422) Franchise tax credit. For tax years beginning on or after January 1, 1998, a shareholder in a financial institution as defined in Section 581 of the Internal Revenue Code which has elected to have its income taxed directly to the shareholders may take a tax credit equal to the shareholder's pro-rata share of the Iowa franchise tax paid by the financial institution.

The credit must be computed by recomputing the amount of tax computed under Iowa Code section 422.33 by reducing the shareholder's taxable income by the shareholder's pro-rata share of the items of income and expenses of the financial institution and deducting from the recomputed tax the credits allowed by Iowa Code section 422.33. The recomputed tax must be subtracted from the amount of tax computed under Iowa Code section 422.33 reduced by the credits allowed in Iowa Code section 422.33.

The resulting amount, not to exceed the shareholder's pro-rata share of the franchise tax paid by the financial institution, is the amount of tax credit allowed the shareholder.

This rule is intended to implement Iowa Code section 422.33, as amended by 1999 Iowa Acts, chapter 95.

701—52.17(422) Assistive device tax credit. Effective for tax years beginning on or after January 1, 2000, a taxpayer who is a small business that purchases, rents, or modifies an assistive device or makes workplace modifications for an individual with a disability who is employed or will be employed by the taxpayer may qualify for an assistive device tax credit, subject to the availability of the credit. The assistive device credit is equal to 50 percent of the first $5,000 paid during the tax year by the small business for the purchase, rental, or modification of an assistive device or for making workplace modifications. Any credit in excess of the tax liability may be refunded or applied to the taxpayer's tax liability for the following tax year. If the taxpayer elects to take the assistive device tax credit, the taxpayer is not to deduct for Iowa income tax purposes any amount of the cost of the assistive device or workplace modification that is deductible for federal income tax purposes. A small business will not be eligible for the assistive device credit if the device is provided for an owner of the small business unless the owner is a bona fide employee of the small business.

52.17(1) *Submitting applications for the credit.* A small business wanting to receive the assistive device tax credit must submit an application for the credit to the Iowa department of economic development and provide other information and documents requested by the Iowa department of economic development. If the taxpayer meets the criteria for qualification for the credit, the Iowa department of economic development will issue the taxpayer a certificate of entitlement for the credit. However, the aggregate amount of assistive device tax credits that may be granted by the Iowa department of economic development to all small businesses during a fiscal year cannot exceed $500,000. The certificate for entitlement of the assistive device credit is to include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the estimated amount of the tax credit, the date on which the taxpayer's application was approved and the date when it is anticipated that the assistive device project will be completed and a space on the application where the taxpayer is to enter the date that the assistive device project was completed. The certificate for entitlement will not be considered to be valid for purposes of claiming the assistive device credit on the taxpayer's Iowa income tax return until the taxpayer has completed the assistive device project and has entered the completion date on the certificate of entitlement form. The tax year of the small business in which the assistive device project is completed is the tax year for which the assistive device credit may be claimed. For example, in a case where taxpayer A received a certificate of entitlement for an assistive device credit on September 15, 2000, and completed the assistive device workplace modification project on January 15, 2001, taxpayer A could claim the assistive device credit on taxpayer A's 2001 Iowa return assuming that taxpayer A is filing returns on a calendar-year basis.

The department of revenue will not allow the assistive device credit on a taxpayer's return if the certificate of entitlement or a legible copy of the certificate is not attached to the taxpayer's income tax return. If the taxpayer has been granted a certificate of entitlement and the taxpayer is an S corporation, where the income of the taxpayer is taxed to the individual owner(s) of the business entity, the taxpayer must provide a copy of the certificate to each of the shareholders with a statement showing how the credit is to be allocated among the individual owners of the S corporation. An individual owner is to attach a

copy of the certificate of entitlement and the statement of allocation of the assistive device credit to the individual's state income tax return.

52.17(2) *Definitions.* The following definitions are applicable to this subrule:

"Assistive device" means any item, piece of equipment, or product system which is used to increase, maintain, or improve the functional capabilities of an individual with a disability in the workplace or on the job. "Assistive device" does not mean any medical device, surgical device, or organ implanted or transplanted into or attached directly to an individual. "Assistive device" does not include any device for which a certificate of title is issued by the state department of transportation, but does include any item, piece of equipment, or product system otherwise meeting the definition of "assistive device" that is incorporated, attached, or included as a modification in or to such a device issued a certificate of title.

"Business entity" means partnership, limited liability company, S corporation, estate or trust, where the income of the business is taxed to the individual owners of the business, whether the individual owner is a partner, member, shareholder, or beneficiary.

"Disability" means the same as defined in Iowa Code section 15.102. Therefore, "disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of the individual, a record of physical or mental impairment that substantially limits one or more of the major life activities of the individual, or being regarded as an individual with a physical or mental impairment that substantially limits one or more of the major life activities of the individual. "Disability" does not include any of the following:

1. Homosexuality or bisexuality;
2. Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders, or other sexual behavior disorders;
3. Compulsive gambling, kleptomania, or pyromania;
4. Psychoactive substance abuse disorders resulting from current illegal use of drugs;
5. Alcoholism.

"Employee" means an individual who is employed by the small business who meets the criteria in Treasury Regulation § 31.3401(c)-1(b), which is the definition of an employee for federal income tax withholding purposes. An individual who receives self-employment income from the small business is not to be considered to be an employee of the small business for purposes of this rule.

"Small business" means that the business either had gross receipts in the tax year before the current tax year of $3 million or less or employed not more than 14 full-time employees during the tax year prior to the current tax year.

"Workplace modifications" means physical alterations to the office, factory, or other work environment where the disabled employee is working or is to work.

52.17(3) *Allocation of credit to owners of a business entity.* If the taxpayer that was entitled to an assistive device credit is a business entity, the business entity is to allocate the allowable credit to each of the individual owners of the entity on the basis of each owner's pro-rata share of the earnings of the entity to the total earnings of the entity. Therefore, if an S corporation has an assistive device credit for a tax year of $2,500 and one shareholder of the S corporation receives 25 percent of the earnings of the corporation, that shareholder would receive an assistive device credit for the tax year of $625 or 25 percent of the total assistive device credit of the S corporation.

This rule is intended to implement Iowa Code section 422.33.

701—52.18(422) Historic preservation and cultural and entertainment district tax credit. A historic preservation and cultural and entertainment district tax credit, subject to the availability of the credit, may be claimed against a taxpayer's Iowa corporate income tax liability for 25 percent of the qualified costs of rehabilitation of property to the extent the costs were incurred on or after July 1, 2000, for the approved rehabilitation projects of eligible property in Iowa. The administrative rules for the historic preservation and cultural and entertainment district tax credit for the historical division of the department of cultural affairs may be found under 223—Chapter 48.

52.18(1) *Eligible property for the historic preservation and cultural and entertainment district tax credit.* The following types of property are eligible for the historic preservation and cultural and entertainment district tax credit:

a. Property verified as listed on the National Register of Historic Places or eligible for such listing through the state historic preservation office (SHPO).

b. Property designated as of historic significance to a district listed in the National Register of Historic Places or eligible for such designation by being located in an area previously surveyed and evaluated as eligible for the National Register of Historic Places.

c. Property or district designated as a local landmark by a city or county ordinance.

d. Any barn constructed prior to 1937.

52.18(2) *Application and review process for the historic preservation and cultural and entertainment district tax credit.* Taxpayers who want to claim an income tax credit for completing a historic preservation and cultural and entertainment district project must submit an application for approval of the project. The application forms for the historic preservation and cultural and entertainment district tax credit may be requested from the State Tax Credit Program Manager, State Historic Preservation Office, Department of Cultural Affairs, 600 E. Locust, Des Moines, Iowa 50319-0290. The telephone number for this office is (515)281-4137. Applications for the credit will be accepted by the state historic preservation office on or after July 1, 2000, until such time as all the available credits allocated for each fiscal year are encumbered. For fiscal years beginning on or after July 1, 2000, $2.4 million shall be appropriated for historic preservation and cultural and entertainment district tax credits for each year. For the fiscal years beginning July 1, 2005, and July 1, 2006, an additional $4 million of tax credits is appropriated for projects located in cultural and entertainment districts which are certified by the department of cultural affairs. If less than $4 million of tax credits is appropriated during a fiscal year, the remaining amount shall be applied to reserved tax credits for projects not located in cultural and entertainment districts in the order of original reservation by the department of cultural affairs. For the fiscal year beginning July 1, 2007, $10 million in historic preservation and cultural and entertainment district tax credits is available. For the fiscal year beginning July 1, 2008, $15 million in historic preservation and cultural and entertainment district tax credits is available. For the fiscal year beginning July 1, 2009, and for subsequent fiscal years, $20 million in historic preservation and cultural and entertainment district tax credits is available. Tax credits shall not be reserved by the department of cultural affairs for more than three years except for tax credits issued for contracts entered into prior to July 1, 2007.

Applicants for the historic preservation and cultural and entertainment district tax credit must include all information and documentation requested on the application forms for the credit in order for the applications to be processed.

The state historic preservation office (SHPO) is to establish selection criteria and standards for rehabilitation projects involving eligible property. The approval process is not to exceed 90 days from the date the application is received by SHPO. To the extent possible, the standards used by SHPO are to be consistent with the standards of the United States Secretary of the Interior for rehabilitation of eligible property that is listed on the National Register of Historic Places or is designated as of historic significance to a district listed in the National Register of Historic Places.

The selection standards are to provide that a taxpayer who qualifies for the rehabilitation investment credit under Section 47 of the Internal Revenue Code shall automatically qualify for the state historic preservation and cultural and entertainment district tax credit to the extent that all the historic preservation and cultural and entertainment district tax credits appropriated for the fiscal year have not already been awarded.

Once SHPO approves a particular historic preservation and cultural and entertainment district tax credit project application, the office will encumber an estimated historic preservation and cultural and entertainment district tax credit under the name of the applicant(s) for the year the project is approved.

52.18(3) *Computation of the amount of the historic preservation and cultural and entertainment district tax credit.* The amount of the historic preservation and cultural and entertainment district tax credit is 25 percent of the qualified rehabilitation costs made to eligible property in a project. Qualified

rehabilitation costs are those rehabilitation costs approved by SHPO for a project for a particular taxpayer to the extent those rehabilitation costs are actually expended by that taxpayer.

In the case of commercial property, rehabilitation costs must equal at least 50 percent of the assessed value of the property, excluding the value of the land, prior to rehabilitation. In the case of residential property or barns, the rehabilitation costs must equal at least $25,000 or 25 percent of the fair market value, excluding the value of the land, prior to the rehabilitation, whichever amount is less. In computing the tax credit for eligible property that is classified as residential or as commercial with multifamily residential units, the rehabilitation costs are not to exceed $100,000 per residential unit. In computing the tax credit, the only costs which may be included are the rehabilitation costs incurred between the period ending on the project completion date and beginning on the date two years prior to the project completion date, provided that any qualified rehabilitation costs incurred prior to the date of approval of the project must be qualified rehabilitation expenditures under the federal rehabilitation credit in Section 47 of the Internal Revenue Code.

For purposes of the historic preservation and cultural and entertainment district tax credit, qualified rehabilitation costs include those costs properly included in the basis of the eligible property for income tax purposes. Costs treated as expenses and deducted in the year paid or incurred and amounts that are otherwise not added to the basis of the property for income tax purposes are not qualified rehabilitation costs. Amounts incurred for architectural and engineering fees, site survey fees, legal expenses, insurance premiums, development fees, and other construction-related costs are qualified rehabilitation costs to the extent they are added to the basis of the eligible property for tax purposes. Costs of sidewalks, parking lots, and landscaping do not constitute qualified rehabilitation costs. Any rehabilitation costs used in the computation of the historic preservation and cultural and entertainment district tax credit are not added to the basis of the property for Iowa income tax purposes if the rehabilitation costs were incurred in a tax year beginning on or after January 1, 2000, but prior to January 1, 2001. Any rehabilitation costs incurred in a tax year beginning on or after January 1, 2001, are added to the basis of the rehabilitated property for income tax purposes except those rehabilitation costs that are equal to the amount of the computed historic preservation and cultural and entertainment district tax credit for the tax year.

For example, the basis of a commercial building in a historic district was $500,000, excluding the value of the land, before the rehabilitation project. During a project to rehabilitate this building, $600,000 in rehabilitation costs were expended to complete the project and $500,000 of those rehabilitation costs were qualified rehabilitation costs which were eligible for the historic preservation and cultural and entertainment district tax credit of $125,000. Therefore, the basis of the building for Iowa income tax purposes was $975,000, since the qualified rehabilitation costs of $125,000, which are equal to the amount of the historic preservation and cultural and entertainment district tax credit for the tax year, are not added to the basis of the rehabilitated property. The basis of the building for federal income tax purposes was $1,100,000. However, for tax years beginning only in the 2000 calendar year, the basis of the rehabilitated property would have been $600,000, since for those tax periods any qualified rehabilitation costs used to compute the historic preservation and cultural and entertainment district tax credit for the tax year could not be added to the basis of the property. It should be noted that this example does not consider any possible reduced basis for the building for federal income tax purposes due to the rehabilitation investment credit provided in Section 47 of the Internal Revenue Code. If the building in this example were eligible for the federal rehabilitation credit provided in Section 47 of the Internal Revenue Code, the basis of the building for Iowa tax purposes would not be affected by the federal credit.

52.18(4) *Completion of the historic preservation and cultural and entertainment district project and claiming the historic preservation and cultural and entertainment district tax credit on the Iowa return.* After the taxpayer completes an authorized rehabilitation project, the taxpayer must get a certificate of completion of the project from the state historic preservation office of the department of cultural affairs. After verifying the taxpayer's eligibility for the historic preservation and cultural and entertainment district tax credit, the state historic preservation office, in consultation with the Iowa department of economic development, is to issue a historic preservation and cultural and entertainment district tax credit certificate, which is to be attached to the taxpayer's income tax return for the tax year

in which the rehabilitation project is completed. The tax credit certificate is to include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the address or location of the rehabilitation project, the date the project was completed, and the amount of the historic preservation and cultural and entertainment district tax credit. In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 52.18(6). In addition, if the taxpayer is a partnership, limited liability company, estate or trust, where the tax credit is allocated to the owners or beneficiaries of the entity, a list of the owners or beneficiaries and the amount of credit allocated to each owner or beneficiary should be provided with the certificate. The tax credit certificate should be attached to the income tax return for the period in which the project was completed. If the amount of the historic preservation and cultural and entertainment district tax credit exceeds the taxpayer's income tax liability for the tax year for which the credit applies, the taxpayer is entitled to a refund of the excess portion of the credit at a discounted value for tax periods ending prior to July 1, 2007. However, the refund cannot exceed 75 percent of the allowable tax credit. The refund of the tax credit is to be computed on the basis of the following table:

Annual Interest Rate	Five-Year Present Value/Dollar Compounded Annually
5%	$.784
6%	$.747
7%	$.713
8%	$.681
9%	$.650
10%	$.621
11%	$.594
12%	$.567
13%	$.543
14%	$.519
15%	$.497
16%	$.476
17%	$.456
18%	$.437

EXAMPLE: The following is an example to show how the table can be used to compute a refund for a taxpayer. An individual has a historic preservation and cultural and entertainment district tax credit of $800,000 for a project completed in 2001. The individual had an income tax liability prior to the credit of $300,000 on the 2001 return, which leaves an excess credit of $500,000. We will assume that the annual interest rate for tax refunds issued by the department of revenue in the 2001 calendar year is 11 percent. Therefore, to compute the five-year present value of the $500,000 excess credit, $500,000 is multiplied by the compound factor for 2001 which is 11 percent or .594 which results in a refund of $297,000.

For tax years ending on or after July 1, 2007, any historic preservation and cultural and entertainment district tax credit in excess of the taxpayer's tax liability is fully refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

52.18(5) *Allocation of historic preservation and cultural and entertainment district tax credits to individual owners of the entity.* When the business entity that has earned a historic preservation and cultural and entertainment district tax credit is an S corporation, partnership, limited liability company, estate or trust where the individual owners of the business entity are taxed on the income of the entity, the historic preservation and cultural and entertainment district tax credit is to be allocated to the individual owners. The business entity is to allocate the historic preservation and cultural and

entertainment district tax credit to each individual owner in the same pro-rata basis that the earnings or profits of the business entity are allocated to the owners for projects beginning prior to July 1, 2005. For example, if a shareholder of an S corporation received 25 percent of the earnings of the corporation and the corporation had earned a historic preservation and cultural and entertainment district tax credit, 25 percent of the credit would be allocated to the shareholder.

For projects beginning on or after July 1, 2005, which used low-income housing tax credits authorized under Section 42 of the Internal Revenue Code to assist in the financing of the rehabilitation project, the credit does not have to be allocated based on the pro-rata share of earnings of the partnership, limited liability company or S corporation. For these projects, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder.

52.18(6) *Transfer of the historic preservation and cultural and entertainment district tax credit.* For tax periods beginning on or after January 1, 2003, the historic preservation and cultural and entertainment district tax credit certificates may be transferred to any person or entity.

Within 90 days of transfer of the tax credit certificate for transfers prior to July 1, 2006, the transferee must submit the transferred tax credit certificate to the state historic preservation office of the department of cultural affairs, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. For transfers on or after July 1, 2006, the transferee must submit the transferred tax credit certificate to the department of revenue. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee for transfers prior to July 1, 2006, the state historic preservation office shall issue a replacement tax credit certificate to the transferee. For transfers on or after July 1, 2006, the department of revenue will issue the replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the historic preservation and cultural and entertainment district tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The replacement tax credit certificate must contain the same information that was on the original certificate and must have the same expiration date as the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax period for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

If the historic preservation and cultural and entertainment district tax credit of the transferee exceeds the tax liability shown on the transferee's return, the refund shall be discounted as described in subrule 52.18(4) for tax years ending prior to July 1, 2007, just as the refund would have been discounted on the Iowa income tax return of the taxpayer. For tax years ending on or after July 1, 2007, any historic preservation and cultural and entertainment district tax credit of the transferee in excess of the transferee's tax liability is fully refundable.

This rule is intended to implement Iowa Code chapter 404A and Iowa Code section 422.33 as amended by 2007 Iowa Acts, Senate File 566.

701—52.19(422) Ethanol blended gasoline tax credit. Effective for tax years beginning on or after January 1, 2002, an ethanol blended gasoline tax credit may be claimed against a taxpayer's corporation income tax liability for retail dealers of gasoline. The taxpayer must operate at least one retail motor fuel site at which more than 60 percent of the total gallons of gasoline sold and dispensed through one or more motor fuel pumps by the taxpayer in the tax year is ethanol blended gasoline. The tax credit shall be calculated separately for each retail motor fuel site operated by the taxpayer. The amount of the credit for each eligible retail motor fuel site is two and one-half cents multiplied by the total number of gallons of ethanol blended gasoline sold and dispensed through all motor fuel pumps located at that retail motor

fuel site during the tax year in excess of 60 percent of all gasoline sold and dispensed through motor fuel pumps at that retail motor fuel site during the tax year.

For fiscal years ending in 2002, the tax credit is available for each eligible retail motor fuel site based on the total number of gallons of ethanol blended gasoline sold and dispensed through all motor fuel pumps located at the taxpayer's retail motor fuel site from January 1, 2002, until the end of the taxpayer's fiscal year. Assuming a tax period that began on July 1, 2001, and ended on June 30, 2002, the taxpayer would be eligible for the tax credit based on the gallons of ethanol blended gasoline sold from January 1, 2002, through June 30, 2002. For taxpayers having a fiscal year ending in 2002, a claim for refund to claim the ethanol blended gasoline tax credit must be filed before October 1, 2003, even though the statute of limitations for refund set forth in 701—subrule 55.3(5) has not yet expired.

EXAMPLE: A taxpayer sold 100,000 gallons of gasoline at the taxpayer's retail motor fuel site during the tax year, 70,000 gallons of which was ethanol blended gasoline. The taxpayer is eligible for the credit since more than 60 percent of the total gallons sold was ethanol blended gasoline. The number of gallons in excess of 60 percent of all gasoline sold is 70,000 less 60,000, or 10,000 gallons. Two and one-half cents multiplied by 10,000 equals a $250 credit available.

The credit may be calculated on Form IA6478. The credit must be calculated separately for each retail motor fuel site operated by the taxpayer. Therefore, if the taxpayer operates more than one retail motor fuel site, it is possible that one retail motor fuel site may be eligible for the credit while another retail motor fuel site may not. The credit can be taken only for those retail motor fuel sites for which more than 60 percent of gasoline sales involve ethanol blended gasoline.

Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

Starting with the 2006 calendar tax year, a taxpayer may claim the ethanol blended gasoline tax credit even if the taxpayer also claims the E-85 gasoline promotion tax credit provided in rule 52.30(422) for the same tax year for the same ethanol gallons.

EXAMPLE: A taxpayer sold 200,000 gallons of gasoline at a retail motor fuel site in 2006, of which 160,000 gallons was ethanol blended gasoline. Of these 160,000 gallons, 1,000 gallons was E-85 gasoline. Taxpayer is entitled to claim the ethanol blended gasoline tax credit of two and one-half cents multiplied by 40,000 gallons, since this constitutes the gallons in excess of 60 percent of the total gasoline gallons sold. Taxpayer may also claim the E-85 gasoline promotion tax credit on the 1,000 gallons of E-85 gasoline sold.

52.19(1) *Definitions.* The following definitions are applicable to this rule:

"Ethanol blended gasoline" means the same as defined in Iowa Code section 214A.1 as amended by 2006 Iowa Acts, House File 2754, section 3.

"Gasoline" means any liquid product prepared, advertised, offered for sale or sold for use as, or commonly and commercially used as, motor fuel for use in a spark-ignition, internal combustion engine, and which meets the specifications provided in Iowa Code section 214A.2.

"Motor fuel pump" means a pump, meter, or similar commercial weighing and measuring device used to measure and dispense motor fuel for sale on a retail basis.

"Retail dealer" means a person engaged in the business of storing and dispensing motor fuel from a motor fuel pump for sale on a retail basis, regardless of whether the motor fuel pump is located at a retail motor fuel site including a permanent or mobile location.

"Retail motor fuel site" means a geographic location in this state where a retail dealer sells and dispenses motor fuel on a retail basis. For example, tank wagons are considered retail motor fuel sites.

"Sell" means to sell on a retail basis.

52.19(2) *Allocation of credit to owners of a business entity.* If the taxpayer that was entitled to the ethanol blended gasoline tax credit is a partnership, limited liability company, S corporation, estate, or trust, the business entity shall allocate the allowable credit to each of the individual owners of the entity on the basis of each owner's pro-rata share of the earnings of the entity to the total earnings of the entity. Therefore, if a partnership has an ethanol blended gasoline tax credit of $3,000 and one partner of the partnership receives 25 percent of the earnings of the partnership, that partner would receive an ethanol

blended gasoline tax credit for the tax year of $750 or 25 percent of the total ethanol blended gasoline tax credit of the partnership.

52.19(3) *Repeal of ethanol blended gasoline tax credit.* The ethanol blended gasoline tax credit is repealed on January 1, 2009. However, the tax credit is available for taxpayers whose fiscal year ends after December 31, 2008, for those ethanol gallons sold beginning on the first day of the taxpayer's fiscal year until December 31, 2008. The ethanol promotion tax credit described in rule 52.36(422) is available beginning January 1, 2009, for retail dealers of gasoline.

EXAMPLE: A taxpayer who is a retail dealer of gasoline has a fiscal year end of April 30, 2009. The taxpayer sold 150,000 gallons of gasoline from May 1, 2008, through December 31, 2008, at the taxpayer's retail motor fuel site, of which 110,000 gallons was ethanol blended gasoline. The number of gallons in excess of 60 percent of all gasoline sold is 110,000 less 90,000, or 20,000 gallons. The taxpayer may claim the ethanol blended gasoline tax credit for the fiscal year ending April 30, 2009, in the amount of $500, or 20,000 gallons times two and one-half cents.

This rule is intended to implement Iowa Code section 422.33 as amended by 2006 Iowa Acts, House File 2754.

701—52.20(15E) Eligible development business investment tax credit. Effective for tax years beginning on or after January 1, 2001, a business which qualifies as an eligible development business may receive a tax credit of up to 10 percent of the new investment which is directly related to the construction, expansion or rehabilitation of building space to be used for manufacturing, processing, cold storage, distribution, or office facilities.

An eligible development business must be approved by the Iowa department of economic development prior to March 17, 2004, and meet the qualifications of Iowa Code section 15E.193C. Effective March 17, 2004, the eligible development business program is repealed.

New investment includes the purchase price of land and the cost of improvements made to real property. The tax credit may be claimed by an eligible development business in the tax year in which the construction, expansion or rehabilitation is completed.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until used, whichever is the earlier.

If the business is a partnership, S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

If the eligible development business fails to meet and maintain any one of the requirements to be an eligible business, the business shall be subject to repayment of all or a portion of the amount of tax incentives received. For example, if within five years of project completion the development business sells or leases any space to any retail business, the development business shall proportionally repay the value of the investment credit. The proportion of the investment credit that would be due for repayment by an eligible development business for selling or leasing space to a retail business would be determined by dividing the square footage of building space occupied by the retail business by the square footage of the total building space.

An eligible business, which is not a development business, which operates in an enterprise zone cannot claim an investment tax credit if the property is owned, or was previously owned, by an approved development business that has already received an investment tax credit. An eligible business, which is not a development business, can claim an investment tax credit only on additional, new improvements made to real property that was not included in the development business's approved application for the investment tax credit.

This rule is intended to implement Iowa Code section 15E.193C.

701—52.21(15E,422) Venture capital credits.

52.21(1) *Investment tax credit for an equity investment in a community-based seed capital fund or qualifying business.* See rule 123—2.1(15E) for the discussion of the investment tax credit for an equity

investment in a community-based seed capital fund or an equity investment made on or after January 1, 2004, in a qualifying business, along with the issuance of tax credit certificates by the Iowa capital investment board.

The department of revenue will be notified by the Iowa capital investment board when the tax credit certificates are issued. The tax credit certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

For equity investments made in a community-based seed capital fund and equity investments made on or after January 1, 2004, in a qualifying business, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

52.21(2) *Investment tax credit for an equity investment in a venture capital fund.* See rule 123—3.1(15E) for the discussion of the investment tax credit for an equity investment in a venture capital fund, along with the issuance of tax credit certificates by the Iowa capital investment board.

The department of revenue will be notified by the Iowa capital investment board when the tax credit certificates are issued. The tax credit certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

For equity investments made in a venture capital fund, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

52.21(3) *Contingent tax credit for investments in Iowa fund of funds.* See rule 123—4.1(15E) for the discussion of the contingent tax credit available for investments made in the Iowa fund of funds organized by the Iowa capital investment corporation. Tax credit certificates related to the contingent tax credits will be issued by the Iowa capital investment board.

The department of revenue will be notified by the Iowa capital investment board when these tax credit certificates are issued and, if applicable, when they are redeemed. If the tax credit certificate is redeemed, the certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

If the tax credit certificate is redeemed, any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until used, whichever is the earlier.

If the tax credit certificate is redeemed, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

This rule is intended to implement Iowa Code section 15E.43 as amended by 2004 Iowa Acts, Senate File 443, and sections 15E.51, 15E.66, 422.11F and 422.33(13).

701—52.22(15) New capital investment program tax credits. Effective for tax periods beginning on or after January 1, 2003, a business which qualifies under the new capital investment program is eligible to receive tax credits. An eligible business under the new capital investment program must be approved by the Iowa department of economic development and meet the qualifications of 2003 Iowa Acts, chapter 125, section 4. The new capital investment program was repealed on July 1, 2005, and has been replaced with the high quality job creation program. See rule 701—52.28(15) for information on the tax credits available under the high quality job creation program. Any tax credits earned by businesses approved

under the new capital investment program prior to July 1, 2005, remain valid, and can be claimed on tax returns filed after July 1, 2005.

52.22(1) *Research activities credit.* A business approved under the new capital investment program is eligible for an additional research activities credit as described in subrule 52.7(5). This credit for increasing research activities is in lieu of the research activities credit described in subrule 52.7(3).

52.22(2) *Investment tax credit.*

a. General rule. An eligible business can claim an investment tax credit equal to a percentage of the new investment directly related to new jobs created by the location or expansion of an eligible business. The percentage is equal to the amount provided in paragraph *"b."* New investment directly related to new jobs created by the location or expansion of an eligible business includes the following:

(1) The cost of machinery and equipment, as defined in Iowa Code section 427A.1(1), paragraphs *"e"* and *"j,"* purchased for use in the operation of the eligible business. The purchase price shall be depreciated in accordance with generally accepted accounting principles.

(2) The purchase price of real property and any buildings and structures located on the real property.

(3) The cost of improvements made to real property which is used in the operation of the eligible business.

For eligible businesses approved by the Iowa department of economic development on or after March 17, 2004, certain lease payments made by eligible businesses to a third-party developer will be considered to be new investment for purposes of computing the investment tax credit. The eligible business shall enter into a lease agreement with the third-party developer for a minimum of five years. The investment tax credit is based on the annual base rent paid to a third-party developer by the eligible business for a period not to exceed ten years. The total costs of the annual base rent payments for the ten-year period cannot exceed the cost of the land and the third-party developer's cost to build or renovate the building used by the eligible business. The annual base rent is defined as the total lease payment less taxes, insurance and operating and maintenance expenses.

Any credit in excess of the tax liability for the tax period may be carried forward seven years or until used, whichever is the earlier.

If the business is a partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount of the credit claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or estate or trust.

b. Tax credit percentage. The amount of tax credit claimed shall be based on the number of high-quality jobs created as determined by the Iowa department of economic development:

(1) If no high-quality jobs are created but economic activity within Iowa is advanced, the eligible business may claim a tax credit of up to 1 percent of the new investment.

(2) If 1 to 5 high-quality jobs are created, the eligible business may claim a tax credit of up to 2 percent of the new investment.

(3) If 6 to 10 high-quality jobs are created, the eligible business may claim a tax credit of up to 3 percent of the new investment.

(4) If 11 to 15 high-quality jobs are created, the eligible business may claim a tax credit of up to 4 percent of the new investment.

(5) If 16 or more high-quality jobs are created, the eligible business may claim a tax credit of up to 5 percent of the new investment.

c. Investment tax credit—value-added agricultural products or biotechnology-related processes. An eligible business whose project primarily involves the production of value-added agricultural products or uses biotechnology-related processes may elect to receive a refund for all or a portion of an unused investment tax credit. An eligible business includes a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol.

Eligible businesses that elect to receive a refund shall apply to the Iowa department of economic development for tax credit certificates between May 1 and May 15 of each fiscal year. Only those

businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. The Iowa department of economic development shall not issue tax credit certificates for more than $4 million during a fiscal year to eligible businesses for this program and eligible businesses described in subrule 52.10(4). If applications are received for more than $4 million, the applicants shall receive certificates for a prorated amount.

The Iowa department of economic development shall issue tax credit certificates within a reasonable period of time. Tax credit certificates are valid for the tax year following project completion. The tax credit certificate must be attached to the tax return for the tax year during which the tax credit is claimed. The tax credit certificate shall not be transferred, except for a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol, as provided in subrule 52.10(4). For value-added agricultural projects involving ethanol, the cooperative must submit a list of its members and the share of each member's interest in the cooperative. The Iowa department of economic development shall issue a tax credit certificate to each member on the list.

d. Repayment of benefits. If an eligible business fails to maintain the requirements of the new capital investment program, the taxpayer may be required to repay all or a portion of the tax incentives taken on Iowa returns. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the tax credits may have expired, the department may proceed to collect the tax incentives forfeited by failure to maintain the requirements of the new capital investment program. This is because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability.

An eligible business in the new capital investment program may also be required to repay all or a portion of the tax incentives received on Iowa returns if the eligible business experiences a layoff of employees in Iowa or closes any of its facilities in Iowa.

If, within five years of purchase, the eligible business sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which a tax credit was claimed under this subrule, the income tax liability of the eligible business shall be increased by one of the following amounts:

(1) One hundred percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within one full year after being placed in service.

(2) Eighty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within two full years after being placed in service.

(3) Sixty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within three full years after being placed in service.

(4) Forty percent of the tax credit claimed if the property ceases to be eligible for the tax credit within four full years after being placed in service.

(5) Twenty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within five full years after being placed in service.

52.22(3) *Corporate tax credit—certain sales taxes paid by developer.* For eligible businesses approved by the Iowa department of economic development on or after March 17, 2004, the eligible business may claim a corporate tax credit for certain sales taxes paid by a third-party developer.

a. Sales taxes eligible for the credit. The sales taxes paid by the third-party developer which are eligible for this credit include the following:

(1) Iowa sales and use tax for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered to, furnished to or performed for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility within the economic development area.

(2) Iowa sales and use tax paid for racks, shelving, and conveyor equipment to be used in a warehouse or distribution center within the economic development area.

Any Iowa sales and use tax paid relating to intangible property, furniture and other furnishings is not eligible for the corporate tax credit.

b. How to claim the credit. The third-party developer must provide to the Iowa department of economic development the amount of Iowa sales and use tax paid as described in paragraph *"a."* The

amount of Iowa sales and use tax attributable to racks, shelving, and conveyor equipment must be identified separately.

The Iowa department of economic development will issue a tax credit certificate to the eligible business equal to the Iowa sales and use tax paid by the third-party developer for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered to, furnished to or performed for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility. In addition, the Iowa department of economic development will also issue a separate tax credit certificate to the eligible business equal to the Iowa sales and use tax paid by the third-party developer for racks, shelving, and conveyor equipment to be used in a warehouse or distribution center.

The tax credit certificate shall contain the name, address, and tax identification number of the eligible business, along with the amount of the tax credit and the year in which the tax credit can be claimed. The tax credit certificate must be attached to the taxpayer's income tax return for the tax year for which the tax credit is claimed. Any tax credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following seven years or until it is used, whichever is the earlier.

For the tax credit certificate relating to Iowa sales and use tax paid by the third-party developer for racks, shelving, and conveyor equipment, the aggregate amount of tax credit certificates and tax refunds for Iowa sales and use tax paid for racks, shelving, and conveyor equipment to eligible businesses under the new jobs and income program, enterprise zone program and new capital investment program cannot exceed $500,000 in a fiscal year. The requests for tax credit certificates or refunds will be processed in the order they are received on a first-come, first-served basis until the amount of credits authorized for issuance has been exhausted. If applications for tax credit certificates or refunds exceed the $500,000 limitation for any fiscal year, the applications shall be considered in succeeding fiscal years.

This rule is intended to implement Iowa Code sections 15.331C, 15.333, and 15.381 to 15.387.

701—52.23(15E) Endow Iowa tax credit. Effective for tax years beginning on or after January 1, 2003, a taxpayer who makes an endowment gift to an endow Iowa qualified community foundation may qualify for an endow Iowa tax credit, subject to the availability of the credit. The credit is equal to 20 percent of a taxpayer's endowment gift to an endow Iowa qualified community foundation approved by the Iowa department of economic development. The administrative rules for the endow Iowa tax credit for the Iowa department of economic development may be found under 261—Chapter 47.

The total amount of endow Iowa tax credits available is $2 million in the aggregate for the 2003 and 2004 calendar years. The total amount of endow Iowa tax credits is $2 million annually for the 2005-2007 calendar years, and $200,000 of these tax credits on an annual basis is reserved for endowment gifts of $30,000 or less. The maximum amount of tax credit granted to a single taxpayer shall not exceed $100,000 for the 2003-2007 calendar years. The total amount of endow Iowa tax credits annually for 2008 and subsequent calendar years is $2 million plus a percentage of the tax imposed on the adjusted gross receipts from gambling games in accordance with Iowa Code section 99F.11(3). The maximum amount of tax credit granted to a single taxpayer shall not exceed 5 percent of the total endow Iowa tax credit amount authorized for 2008 and subsequent years. The endow Iowa tax credit cannot be transferred to any other taxpayer.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

If a taxpayer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code Supplement section 15E.305 as amended by 2006 Iowa Acts, chapter 1151, and Iowa Code section 422.33.

701—52.24(422) Soy-based cutting tool oil tax credit. Effective for tax periods ending after June 30, 2005, and beginning before January 1, 2007, a manufacturer may claim a soy-based cutting tool oil tax credit. A manufacturer, as defined in Iowa Code section 428.20, may claim the credit equal to the costs incurred during the tax year for the purchase and replacement costs relating to the transition from using nonsoy-based cutting tool oil to using soy-based cutting tool oil.

All of the following conditions must be met to qualify for the tax credit.

1. The costs must be incurred after June 30, 2005, and before January 1, 2007.
2. The costs must be incurred in the first 12 months of the transition from using nonsoy-based cutting tool oil to using soy-based cutting tool oil.
3. The soy-based cutting tool oil must contain at least 51 percent soy-based products.
4. The costs of the purchase and replacement must not exceed $2 per gallon of soy-based cutting tool oil used in the transition.
5. The number of gallons used in the transition cannot exceed 2,000 gallons.
6. The manufacturer shall not deduct for Iowa income tax purposes the costs incurred in the transition to using soy-based cutting tool oil which are deductible for federal tax purposes.

Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

If a taxpayer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code section 422.33 as amended by 2005 Iowa Acts, Senate File 389.

701—52.25(15I,422) Wage-benefits tax credit. Effective for tax years ending on or after June 9, 2006, a wage-benefits tax credit equal to a percentage of the annual wages and benefits paid for a qualified new job created by the location or expansion of the business in Iowa is available for qualified businesses.

52.25(1) *Definitions.* The following definitions are applicable to this rule:

"Average county wage" means the annualized average hourly wage calculated by the Iowa department of economic development using the most current four quarters of wage and employment information as provided in the Quarterly Covered Wage and Employment Data report provided by the department of workforce development. Agricultural/mining and governmental employment categories are deleted in compiling the wage information.

"Benefits" means all of the following:

1. Medical and dental insurance plans.
2. Pension and profit-sharing plans.
3. Child care services.
4. Life insurance coverage.
5. Vision insurance plan.
6. Disability coverage.

"Department" means the Iowa department of revenue.

"Full-time" means the equivalent of employment of one person:

1. For 8 hours per day for a 5-day, 40-hour workweek for 52 weeks per year, including paid holidays, vacations, and other paid leave, or
2. The number of hours or days per week, including paid holidays, vacations, and other paid leave, currently established by schedule, custom or otherwise, as constituting a week of full-time work for the kind of service an individual performs for an employing unit.

"Grow Iowa values fund" means the grow Iowa values fund created in Iowa Code Supplement section 15G.108.

"Nonqualified new job" means any one of the following:

1. A job previously filled by the same employee in Iowa.
2. A job that was relocated from another location in Iowa.

3. A job that is created as a result of a consolidation, merger, or restructuring of a business entity if the job does not represent a new job in Iowa.

"Qualified new job" or *"job creation"* means a job that meets all of the following criteria:

1. Is a new full-time job that has not existed in the business within the previous 12 months in Iowa.
2. Is filled by a new employee for at least 12 months.
3. Is filled by a resident of the state of Iowa.
4. Is not created as a result of a change in ownership.
5. Was created on or after June 9, 2005.

"Retail business" means a business which sells its product directly to a consumer.

"Retained qualified new job" or *"job retention"* means the continued employment, after the first 12 months of employment, of the same employee in a qualified new job for another 12 months.

"Service business" means a business which is not engaged in the sale of tangible personal property, and which provides services to a local consumer market and does not have a significant proportion of its sales coming from outside the state.

52.25(2) *Calculation of credit.* A business which is not a retail or service business may claim the wage-benefits tax credit which is determined as follows:

a. If the annual wages and benefits for the qualified new job equal less than 130 percent of the average county wage, the credit is 0 percent of the annual wage and benefits paid.

b. If the annual wages and benefits for the qualified new job equal at least 130 percent but less than 160 percent of the average county wage, the credit is 5 percent of the annual wage and benefits paid for each qualified new job.

c. If the annual wages and benefits for the qualified new job equal at least 160 percent of the average county wage, the credit is 10 percent of the annual wage and benefits paid for each qualified new job.

If the business is a partnership, S corporation, limited liability company, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit. The amount claimed by the individual shall be based upon the pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

52.25(3) *Application for the tax credit, tax credit certificate and amount of tax credit available.*

a. In order to claim the wage-benefits tax credit, the business must submit an application to the department along with information on the qualified new job or retained qualified new job. The application cannot be submitted until the end of the twelfth month after the qualified job was filled. For example, if the new job was created on June 9, 2005, the application cannot be submitted until June 9, 2006. The following information must be submitted in the application:

(1) Name, address and federal identification number of the business.

(2) A description of the activities of the business. If applicable, the proportion of the sales of the business which come from outside Iowa should be included.

(3) The amount of wages and benefits paid to each employee for each new job for the previous 12 months.

(4) A computation of the amount of credit being requested.

(5) The address and state of residence of each new employee.

(6) The date that the qualified new job was filled.

(7) An indication of whether the job is a qualified new job or a retained qualified new job for which an application was filed for a previous year.

(8) The type of tax for which the credit will be applied.

(9) If the business is a partnership, S corporation, limited liability company, or estate or trust, a schedule of the partners, shareholders, members or beneficiaries. This schedule shall include the names, addresses and federal identification number of the partners, shareholders, members or beneficiaries, along with their percentage of the pro-rata share of earnings of the partnership, S corporation, limited liability company, or estate or trust.

b. Upon receipt of the application, the department has 45 days either to approve or disapprove the application. If the department does not act on the application within 45 days, the application is deemed to be approved. If the department disapproves the application, the business may appeal the decision to the Iowa economic development board within 30 days of the notice of disapproval.

c. If the application is approved, or if the Iowa economic development board approves the application that was previously denied by the department, a tax credit certificate will be issued by the department to the business, subject to the availability of the amount of credits that may be issued. The tax credit certificate will contain the name, address and tax identification number of the business (or individual, estate or trust, if applicable), the date of the qualified new job(s), the wage and benefits paid for each job(s) for the 12-month period, the amount of the credit, the tax period for which the credit may be applied, and the type of tax for which the credit will be applied.

d. The tax credit certificates that are issued in a fiscal year cannot exceed $10 million for the fiscal year ending June 30, 2007, and shall not exceed $4 million for the fiscal years ending June 30, 2008, through June 30, 2011. The tax credit certificates are issued on a first-come, first-served basis. Therefore, if tax credit certificates have already been issued for the $10 million limit for the fiscal year ending June 30, 2007, any applications for tax credit certificates received after the $10 million limit has been reached will be denied. Similarly, if tax credit certificates have already been issued for the $4 million limit for the fiscal years ending June 30, 2008, through June 30, 2011, any applications for tax credit certificates received after the $4 million limit has been reached will be denied. If a business failed to receive all or a part of the tax credit due to the $10 million or $4 million limitation, the business may reapply for the tax credit for the retained new job for a subsequent tax period.

e. A business which qualifies for the tax credit for the fiscal year ending June 30, 2007, is eligible to receive the tax credit certificate for each of the fiscal years ending June 30, 2008, through June 30, 2011, subject to the $4 million limit for tax credits for the fiscal years ending June 30, 2008, through June 30, 2011, if the business retains the qualified new job during each of the fiscal years ending June 30, 2008, through June 30, 2011. The business must reapply by June 30 of each fiscal year for the tax credit, and the percentage of the wages and benefits allowed for the credit set forth in subrule 52.25(2) for the first year is applicable for each subsequent period. Preference will be given in issuing tax credit certificates for those businesses that retain qualified new jobs, and preference will be given in the order in which applications were filed for the fiscal year ending June 30, 2007. Therefore, those businesses which received the first $4 million of tax credits for the year ending June 30, 2007, in which the qualified jobs were created will automatically receive a tax credit for the fiscal years ending June 30, 2008, through June 30, 2011, as long as the qualified jobs are retained and an application is completed.

f. For the fiscal years ending June 30, 2008, through June 30, 2011, if credits become available because the jobs were not retained by businesses which received the first $4 million of credits for the year ending June 30, 2007, an application which was originally denied will be considered in the order in which the application was received for the fiscal year ending June 30, 2007.

EXAMPLE: Wage-benefits tax credits of $4 million were issued for the fiscal year ending June 30, 2007, relating to applications filed between July 1, 2006, and March 31, 2007. For the next fiscal year ending June 30, 2008, the same businesses that received the $4 million in wage-benefits tax credits filed applications totaling $3 million for the retained jobs for which the application for the prior year was filed on or before March 31, 2007. The first $3 million of the available $4 million will be allowed to these same businesses. The remaining $1 million that is still available for the year ending June 30, 2008, will be allowed for those retained jobs for which applications for the prior year were filed starting on April 1, 2007, until the remaining $1 million in tax credits is issued.

g. A business may apply in writing to the Iowa economic development board for a waiver of the average wage and benefit requirement. See 261—subrule 68.3(2) for more detail on the procedures to apply for a waiver of the wage and benefit requirement. If a waiver is granted, the business must provide the department with the waiver and it must be attached to the application.

h. A business may receive other federal, state, and local incentives and tax credits in addition to the wage-benefits tax credit. However, a business that receives a wage-benefits tax credit cannot receive

tax incentives under the high quality job creation program set forth in Iowa Code chapter 15 as amended by 2005 Iowa Acts, chapter 150, or moneys from the grow Iowa values fund.

52.25(4) *Examples.* The following noninclusive examples illustrate how this rule applies:

EXAMPLE 1: Business A operates a grocery store and hires five new employees, each of whom will earn wages and benefits in excess of 130 percent of the average county wage. Business A would not qualify for the wage-benefits tax credit because Business A is a retail business.

EXAMPLE 2: Business B operates an accounting firm and hires two new accountants, each of whom will earn wages and benefits in excess of 160 percent of the average county wage. The accounting firm provides services to clients wholly within Iowa. Business B would not qualify for the wage-benefits tax credit because it is a service business. The majority of its sales are generated from within the state of Iowa and thus Business B, because it is a service business, is not eligible for the credit.

EXAMPLE 3: Business C operates a software development business and hires two new programmers, each of whom will earn wages and benefits in excess of 160 percent of the average county wage. Over 50 percent of the customers of Business C are located outside Iowa. Business C would qualify for the wage-benefits tax credit because a majority of its sales are coming from outside the state, even though Business C is engaged in the performance of services.

EXAMPLE 4: Business D is a manufacturer that hires a new employee in Clayton County, Iowa, on July 8, 2005. The average county wage for Clayton County for the third quarter of 2005 is $11.86 per hour. If the average county wage per hour for Clayton County is $11.95 for the fourth quarter of 2005, $12.05 for the first quarter of 2006, and $12.14 for the second quarter of 2006, the annualized average county wage for this 12-month period is $12.00 per hour. This wage equates to an average annual wage of $24,960 ($12.00 × 40 hours × 52 weeks). In order to qualify for the 5 percent wage-benefits tax credit, the new employee must receive wages and benefits totaling $32,448 (130 percent of $24,960) for the 12-month period from July 8, 2005, through July 7, 2006. In order to qualify for the 10 percent wage-benefits tax credit, the new employee must receive wages and benefits totaling $39,936 (160 percent of $24,960) for the 12-month period from July 8, 2005, through July 7, 2006.

EXAMPLE 5: Business E is a manufacturer that hires three new employees in Grundy County, Iowa, on July 1, 2005. If the average county wage for the 12-month period from July 1, 2005, through June 30, 2006, is $13.75 per hour in Grundy County, this wage equates to an average county wage of $28,600. The wages and benefits for each of these three new employees is $40,000 for the period from July 1, 2005, through June 30, 2006, which is 140 percent of the average county wage. Business E is entitled to a wage-benefits tax credit of $2,000 for each employee ($40,000 × 5 percent), for a total wage-benefits tax credit of $6,000. If Business E files on a calendar-year basis, the $6,000 wage-benefits tax credit can be claimed on the tax return for the period ending December 31, 2006.

EXAMPLE 6: Business F is a manufacturer that hires ten new employees on July 1, 2005, and qualifies for the wage-benefits tax credit because the wages and benefits paid exceed 130 percent of the average county wage. Business F receives a wage-benefits tax credit in July 2006 for these ten employees, which can be used on the tax return for the period ending December 31, 2006. On August 31, 2006, two of the employees leave the business and are replaced by two new employees. Business F is entitled to a wage-benefits tax credit for only eight employees in July 2007 because only eight employees continued employment for the subsequent 12 months, which meets the definition of a retained qualified new job. Business F cannot request a wage-benefits tax credit for the two employees hired on August 31, 2006. Business F cannot request the wage-benefits tax credit because these two full-time jobs existed in the business within the previous 12 months in Iowa, and these jobs do not meet the definition of a qualified new job or retained qualified new job.

EXAMPLE 7: Business G is a manufacturer that hires ten new employees on July 1, 2005, and qualifies for the wage-benefits tax credit because the wages and benefits paid exceed 130 percent of the average county wage. Business G receives a wage-benefits tax credit in July 2006 for these ten employees equal to 5 percent of the wages and benefits paid. On October 1, 2006, Business G hires an additional five employees, each of whom receives wages and benefits in excess of 130 percent of the average county wage. Business G can apply for the wage-benefits tax credit on October 1, 2007, for these five employees,

since these employees have now been employed for 12 months. However, the credit may not be allowed if more than $4 million of retained job applications is received for the fiscal year ending June 30, 2008.

EXAMPLE 8: Assume the same facts as Example 6, except that the $10 million limit of tax credits has already been met for the fiscal year ending June 30, 2007, and Business F hired five new employees on August 31, 2006. Business F can apply for the wage-benefits tax credit for the three employees on August 31, 2007, a number which is above the ten full-time jobs originally created, but Business F may not receive the tax credit if more than $4 million of retained job applications is received for the fiscal year ending June 30, 2008.

EXAMPLE 9: Assume the same facts as Example 7, except that the ten employees hired on July 1, 2005, by Business G received wages and benefits equal to 155 percent of the average county wage, and the five employees hired on October 1, 2006, by Business G received wages equal to 161 percent of the average county wage. Business G can apply for the tax credit on October 1, 2007, equal to 10 percent of the wages and benefits paid for the employees hired on October 1, 2006. On July 1, 2007, Business G can reapply for the tax credit equal to 5 percent of the wages and benefits paid only for the ten employees originally hired on July 1, 2005, even if the wages and benefits for these ten employees exceed 160 percent of the average county wage for the period from July 1, 2006, through June 30, 2007.

52.25(5) *Repeal of the wage-benefits tax credit.* The wage-benefits tax credit is repealed effective July 1, 2008. However, the wage-benefits tax credit is still available through the fiscal year ending June 30, 2011, as provided in subrule 52.25(3), paragraphs *"d," "e,"* and *"f."* A business is not entitled to a wage-benefits tax credit for a qualified new job created on or after July 1, 2008.

This rule is intended to implement Iowa Code chapter 15I as amended by 2008 Iowa Acts, House File 2700, section 167, and Iowa Code section 422.33(18).

701—52.26(422,476B) Wind energy production tax credit. Effective for tax years beginning on or after July 1, 2006, an owner of a qualified wind energy production facility that has been approved by the Iowa utilities board may claim a wind energy production tax credit for qualified electricity sold by the owner or used for on-site consumption against a taxpayer's Iowa corporation income tax liability. The administrative rules for the certification of eligibility for the wind energy production tax credit for the Iowa utilities board may be found in rule 199—15.18(476B).

52.26(1) *Application and review process for the wind energy production tax credit.* An owner of a wind energy production facility must be approved by the Iowa utilities board in order to qualify for the wind energy production tax credit. The facility must be an electrical production facility that produces electricity from wind, is located in Iowa, and must be placed in service on or after July 1, 2005, but before July 1, 2012. For applications filed on or after March 1, 2008, a facility must consist of one or more wind turbines which have a combined nameplate generating capacity of at least two megawatts. In addition, the facility must also be approved by the board of supervisors of the county in which the facility is located. Once the owner receives the approval from the board of supervisors, approval is not required for subsequent tax periods.

The wind energy production tax credit cannot be allowed for a facility for which the owner has claimed an exemption from property tax under Iowa Code section 427B.26 or 441.21(8) or claimed an exemption from sales tax under Iowa Code section 423.3(54). The facility will be subject to the assessment of property tax in accordance with rule 701—80.13(427B).

The maximum amount of nameplate generating capacity for all qualified wind energy production facilities cannot exceed 450 megawatts of nameplate generating capacity. An owner shall not own more than two qualified facilities. A facility that is not operational within 18 months after issuance of the approval from the Iowa utilities board will no longer be considered a qualified facility. However, a facility that is not operational within 18 months due to the unavailability of necessary equipment shall be granted an additional 12 months to become operational.

An owner of the qualified facility must apply to the Iowa utilities board for the wind energy production tax credit. The application for the tax credit must be filed no later than 30 days after the close of the tax year for which the credit is applied. The information to be included in the application is set forth in 199—subrule 15.20(1).

52.26(2) *Computation of the credit.* The wind energy production credit equals one cent multiplied by the number of kilowatt-hours of qualified electricity sold or used for on-site consumption by the owner during the tax year. For the first tax year in which the credit is applied, the kilowatt-hours of qualified electricity sold may exceed 12 months.

EXAMPLE: A qualified facility was placed in service on April 1, 2006, and the taxpayer files on a calendar-year basis. The first year for which the credit can be claimed is the period ending December 31, 2007, since that is the first tax year that began on or after July 1, 2006. The credit for the 2007 tax year can include electricity sold between April 1, 2006, and December 31, 2007.

The credit is not allowed for any kilowatt-hours of electricity sold to a related person. The definition of "related person" uses the same criteria set forth in Section 45(e)(4) of the Internal Revenue Code relating to the federal renewable electricity production credit. Persons shall be treated as related to each other if such persons are treated as a single employer under Treasury Regulation §1.52-1. In the case of a corporation that is a member of an affiliated group of corporations filing a federal consolidated return, such corporation shall be treated as selling electricity to an unrelated person if such electricity is sold to the person by another member of the affiliated group.

The utilities board will notify the department of the number of kilowatt-hours of electricity sold by the qualified facility or generated and used on site by the qualified facility during the tax year. The department will calculate the credit and issue a tax credit certificate to the owner. The tax credit certificate will include the taxpayer's name, address and federal identification number, the tax type for which the credit will be claimed, the amount of the credit and the tax year for which the credit may be claimed. In addition, the tax credit certificate will include a place for the name and tax identification number of a transferee and the amount of the tax credit certificate, as provided in subrule 52.26(3). If the department refuses to issue the tax credit certificate, the taxpayer shall be notified in writing and the taxpayer will have 60 days from the date of denial to file a protest in accordance with rule 701—7.41(17A). The department will not issue a tax credit certificate if the facility is not operational within 18 months after approval was given by the utilities board.

If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners, members, shareholders or beneficiaries based on the partner's, member's, shareholder's or beneficiary's pro-rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust, except when the taxpayer is eligible to receive renewable electricity production tax credits authorized under Section 45 of the Internal Revenue Code. In cases where the taxpayer is eligible to receive renewable electricity production tax credits under Section 45 of the Internal Revenue Code, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder. In addition, if a taxpayer is a partnership, limited liability company, S corporation, or estate or trust that is eligible to receive renewable electricity production tax credits under Section 45 of the Internal Revenue Code, the taxpayer may distribute the tax credit to an equity holder or beneficiary as a liquidating distribution or portion thereof, of an equity holder's interest in the partnership, limited liability company or S corporation, or the beneficiary's interest in the estate or trust.

The credit can be allowed for a ten-year period beginning on the date the qualified facility was originally placed in service. For example, if a facility was placed in service on April 1, 2006, the credit can be claimed for kilowatt-hours of electricity sold between April 1, 2006, and March 31, 2016.

To claim the tax credit, the taxpayer must attach the tax credit certificate to the tax return for the tax year set forth on the certificate. Any tax credit in excess of the tax liability may be carried forward for seven years or until it is used, whichever is the earlier.

52.26(3) *Transfer of the wind energy production tax credit certificate.* The wind energy production tax credit certificate may be transferred to any person or entity.

Within 30 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department

will issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the wind energy production tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries. The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have the same effective taxable year and the same expiration date as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

This rule is intended to implement Iowa Code section 422.33 and chapter 476B as amended by 2008 Iowa Acts, Senate File 2405.

701—52.27(422,476C) Renewable energy tax credit. Effective for tax years beginning on or after July 1, 2006, a purchaser or producer of renewable energy whose facility has been approved by the Iowa utilities board may claim a renewable energy tax credit for qualified renewable energy against a taxpayer's Iowa corporation income tax liability. The administrative rules for the certification of eligibility for the renewable energy tax credit for the Iowa utilities board may be found in rule 199—15.19(476C).

52.27(1) *Application and review process for the renewable energy tax credit.* A producer or purchaser of a renewable energy facility must be approved by the Iowa utilities board in order to qualify for the renewable energy credit. The eligible renewable energy facility can be a wind energy conversion facility, biogas recovery facility, biomass conversion facility, methane gas recovery facility, solar energy conversion facility or refuse conversion facility. The facility must be located in Iowa and placed in service on or after July 1, 2005, and before January 1, 2012.

The maximum amount of nameplate generating capacity of all wind energy conversion facilities cannot exceed 180 megawatts of nameplate generating capacity. The maximum amount of energy production capacity for biogas recovery facilities, biomass conversion facilities, methane gas recovery facilities, solar energy conversion facilities and refuse conversion facilities cannot exceed a combined output of 20 megawatts of nameplate generating capacity and 167 billion British thermal units of heat for a commercial purpose. A facility that is not operational within 30 months after issuance of approval from the utilities board will no longer be considered a qualified facility. A producer of renewable energy, which is the person who owns the renewable energy facility, cannot own more than two eligible renewable energy facilities. A person that has an equity interest equal to or greater than 51 percent in an eligible renewable energy facility cannot have an equity interest greater than 10 percent in any other renewable energy facility.

A producer or purchaser of a renewable energy facility must apply to the utilities board for the renewable energy tax credit. The application for the tax credit must be filed no later than 30 days after the close of the tax year for which the credit is applied. The information to be included in the application is set forth in 199—subrule 15.21(1).

52.27(2) *Computation of the credit.* The renewable energy tax credit equals 1½ cents per kilowatt-hour of electricity, or 44 cents per 1000 standard cubic feet of hydrogen fuel, or $4.50 per 1 million British thermal units of methane gas or other biogas used to generate electricity, or $4.50 per 1 million British thermal units of heat for a commercial purpose generated by and purchased from an eligible renewable energy facility during the tax year. For the first tax year in which the credit is applied, the kilowatt-hours, standard cubic feet or British thermal units generated by and purchased from the facility may exceed 12 months.

EXAMPLE: A qualified wind energy production facility was placed in service on April 1, 2006, and the taxpayer files on a calendar-year basis. The first year for which the credit can be claimed is the year ending December 31, 2007, since that is the first tax year that began on or after July 1, 2006. The credit for the 2007 tax year can include electricity generated and purchased between April 1, 2006, and December 31, 2007.

The credit is not allowed for any kilowatt-hours, standard cubic feet or British thermal units that are purchased from an eligible facility by a related person. Persons shall be treated as related to each other if either person owns an 80 percent or more equity interest in the other person.

The utilities board will notify the department of the number of kilowatt-hours, standard cubic feet or British thermal units that are generated and purchased from an eligible facility during the tax year. The department will calculate the credit and issue a tax credit certificate to the purchaser or producer. The tax credit certificate will include the taxpayer's name, address and federal identification number, the tax type for which the credit will be claimed, the amount of the credit and the tax year for which the credit may be claimed. In addition, the tax credit certificate will include a place for the name and tax identification number of a transferee and the amount of the tax credit certificate, as provided in subrule 52.27(3). If the department refuses to issue the tax credit certificate, the taxpayer shall be notified in writing and the taxpayer will have 60 days from the date of denial to file a protest in accordance with rule 701—7.41(17A). The department will not issue a tax credit certificate if the facility is not operational within 30 months after approval was given by the utilities board. In addition, the department will not issue a tax credit certificate to any person who received a wind energy production tax credit in accordance with Iowa Code chapter 476B.

If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners, members, shareholders or beneficiaries based on the partner's, member's, shareholder's or beneficiary's pro-rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust, except when the taxpayer is eligible to receive renewable electricity production tax credits authorized under Section 45 of the Internal Revenue Code. In cases where the taxpayer is eligible to receive renewable electricity production tax credits under Section 45 of the Internal Revenue Code, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder. In addition, if a taxpayer is a partnership, limited liability company, S corporation, or estate or trust that is eligible to receive renewable electricity production tax credits under Section 45 of the Internal Revenue Code, the taxpayer may distribute the tax credit to an equity holder or beneficiary as a liquidating distribution or portion thereof, of an equity holder's interest in the partnership, limited liability company or S corporation, or the beneficiary's interest in the estate or trust.

The credit can be allowed for a ten-year period beginning on the date the qualified facility was originally placed in service. For example, if a renewable energy facility was placed in service on April 1, 2006, the credit can be claimed for kilowatt-hours, standard cubic feet or British thermal units generated and purchased between April 1, 2006, and March 31, 2016. Tax credit certificates cannot be issued for renewable energy purchased after December 31, 2021.

To claim the tax credit, the taxpayer must attach the tax credit certificate to the tax return for the tax period set forth on the certificate. Any tax credit in excess of the tax liability may be carried forward for seven years or until it is used, whichever is the earlier.

52.27(3) *Transfer of the renewable energy tax credit certificate.* The renewable energy tax credit certificate may be transferred once to any person or entity. A decision between a producer and purchaser of renewable energy regarding who may claim the tax credit is not considered a transfer.

Within 30 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department will issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual or corporation

income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the renewable energy tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries. The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have the same effective taxable year and the same expiration date as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

This rule is intended to implement Iowa Code section 422.33 and chapter 476C.

701—52.28(15) High quality job creation program. Effective for tax periods ending on or after July 1, 2005, a business which qualifies under the high quality job creation program is eligible to receive tax credits. The high quality job creation program replaces the new jobs and income program and the new capital investment program. An eligible business under the high quality job creation program must be approved by the Iowa department of economic development and meet the qualifications of Iowa Code Supplement section 15.329. The administrative rules for the high quality job creation program for the Iowa department of economic development may be found at 261—Chapter 68.

52.28(1) *Research activities credit.* An eligible business approved under the high quality job creation program is eligible for an additional research activities credit as described in subrule 52.7(4).

Research activities allowable for the Iowa research activities credit include expenses related to the development and deployment of innovative renewable energy generation components manufactured or assembled in Iowa; such expenses related to the development and deployment of innovative renewable energy generation components are not eligible for the federal credit for increasing research activities. For purposes of this subrule, innovative renewable energy generation components do not include components with more than 200 megawatts in installed effective nameplate capacity. The research activities credit related to renewable energy generation components under the high quality job creation program and the enterprise zone program shall not exceed $1 million in the aggregate.

These expenses related to the development and deployment of innovative renewable energy generation components are applicable only to the additional research activities credit set forth in this subrule and are not applicable to the research activities credit set forth in subrule 52.7(3). The research activities credit is subject to the threshold amounts of qualifying investment set forth in Iowa department of economic development 261—subrule 68.4(7).

52.28(2) *Investment tax credit.*

a. General rule. An eligible business can claim an investment tax credit equal to a percentage of the new investment directly related to new jobs created by the location or expansion of an eligible business. The percentage is equal to the amount provided in Iowa department of economic development 261—subrule 68.4(7). New investment directly related to new jobs created by the location or expansion of an eligible business includes the following:

(1) The cost of machinery and equipment, as defined in Iowa Code section 427A.1(1), paragraphs *"e"* and *"j,"* purchased for use in the operation of the eligible business. The purchase price shall be depreciated in accordance with generally accepted accounting principles.

(2) The purchase price of real property and any buildings and structures located on the real property.

(3) The cost of improvements made to real property which is used in the operation of the eligible business.

In addition, certain lease payments made by eligible businesses to a third-party developer will be considered to be new investment for purposes of computing the investment tax credit. The eligible business shall enter into a lease agreement with the third-party developer for a minimum of five years. The investment tax credit is based on the annual base rent paid to a third-party developer by the eligible

business for a period not to exceed ten years. The total costs of the annual base rent payments for the ten-year period cannot exceed the cost of the land and the third-party developer's cost to build or renovate the building used by the eligible business. The annual base rent is defined as the total lease payment less taxes, insurance and operating and maintenance expenses.

The investment tax credit can be claimed in the tax year in which the qualifying assets are placed in service. The investment tax credit will be amortized over a five-year period. Any credit in excess of the tax liability for the tax period may be carried forward seven years or until used, whichever is the earlier.

EXAMPLE: An eligible business which files tax returns on a calendar-year basis earned $100,000 of investment tax credits for new investment made in 2006. The business can claim $20,000 of investment tax credits for each of the years from 2006 through 2010. The $20,000 of investment tax credit that can be claimed in 2006 can be carried forward to the 2007-2013 tax years if the entire credit cannot be claimed on the 2006 return. Similarly, the $20,000 investment tax credit that can be claimed in 2007 can be carried forward to the 2008-2014 tax years if the entire credit cannot be claimed on the 2007 return.

If the business is a partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount of the credit claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or estate or trust electing to have the income taxed directly to an individual.

b. Investment tax credit—value-added agricultural products or biotechnology-related processes. An eligible business whose project primarily involves the production of value-added agricultural products or uses biotechnology-related processes may elect to receive a refund for all or a portion of an unused investment tax credit. An eligible business includes a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol.

Eligible businesses that elect to receive a refund shall apply to the Iowa department of economic development for tax credit certificates between May 1 and May 15 of each fiscal year. Only those businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. The Iowa department of economic development shall not issue tax credit certificates for more than $4 million during a fiscal year to eligible businesses for this program and the enterprise zone program described in subrule 52.14(2). If applications are received for more than $4 million, the applicants shall receive certificates for a prorated amount.

The Iowa department of economic development shall issue tax credit certificates within a reasonable period of time. Tax credit certificates are valid for the tax year following project completion. The tax credit certificate must be attached to the tax return for the tax year during which the tax credit is claimed. The tax credit certificate shall not be transferred, except for a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol, as provided in subrule 52.10(4). For value-added agricultural projects involving ethanol, the cooperative must submit a list of its members and the share of each member's interest in the cooperative. The Iowa department of economic development shall issue a tax credit certificate to each member on the list.

c. Repayment of benefits. If an eligible business fails to maintain the requirements of the high quality job creation program, the taxpayer may be required to repay all or a portion of the tax incentives taken on Iowa returns. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the tax credits may have expired, the department may proceed to collect the tax incentives forfeited by failure of the eligible business to maintain the requirements of the high quality job creation program because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability.

An eligible business in the high quality job creation program may also be required to repay all or a portion of the tax incentives received on Iowa returns if the eligible business experiences a layoff of employees in Iowa or closes any of its facilities in Iowa.

If, within five years of purchase, the eligible business sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which a tax credit was claimed

under this subrule, the income tax liability of the eligible business shall be increased by one of the following amounts:

(1) One hundred percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within one full year after being placed in service.

(2) Eighty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within two full years after being placed in service.

(3) Sixty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within three full years after being placed in service.

(4) Forty percent of the tax credit claimed if the property ceases to be eligible for the tax credit within four full years after being placed in service.

(5) Twenty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within five full years after being placed in service.

52.28(3) *Determination of tax credit amounts.* The amount of tax credit claimed under the high quality job creation program shall be based on the number of high quality jobs created and the amount of qualifying investment made as determined by the Iowa department of economic development.

a. If the high quality jobs have a starting wage, including benefits, equal to or greater than 130 percent of the average county wage but less than 160 percent of the average county wage, see Iowa department of economic development 261—paragraph 68.4(7)*"a"* for the amount of tax credits that may be claimed.

b. If the high quality jobs have a starting wage, including benefits, equal to or greater than 160 percent of the average county wage, see Iowa department of economic development 261—paragraph 68.4(7)*"b"* for the amount of tax credits that may be claimed.

c. An eligible business approved under the high quality job creation program is not eligible for the wage-benefits tax credit set forth in rule 701—52.25(15H).

This rule is intended to implement Iowa Code Supplement chapter 15.

701—52.29(15E,422) Economic development region revolving fund tax credit. Effective for tax years ending on or after July 1, 2005, a taxpayer who makes a contribution to an economic development region revolving fund may claim a tax credit, subject to the availability of the credit. The credit is equal to 20 percent of a taxpayer's contribution to the economic development region revolving fund approved by the Iowa department of economic development. The administrative rules for the economic development region revolving fund tax credit for the Iowa department of economic development may be found at 261—Chapter 32.

The total amount of economic development region revolving fund tax credits available shall not exceed $2 million per fiscal year. The tax credit shall not be carried back to a tax year prior to the year in which the taxpayer redeems the credit. The economic development region revolving fund tax credit is not transferable to any other taxpayer.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following ten years or until used, whichever is the earlier.

If a taxpayer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code Supplement sections 15E.232 and 422.33.

701—52.30(422) E-85 gasoline promotion tax credit. Effective for tax years beginning on or after January 1, 2006, a retail dealer of gasoline may claim an E-85 gasoline promotion tax credit. "E-85 gasoline" means ethanol blended gasoline formulated with a minimum percentage of between 70 percent and 85 percent of volume of ethanol, if the formulation meets the standards provided in Iowa Code section 214A.2. For purposes of this rule, tank wagon sales are considered retail sales. The credit is calculated on Form IA135. The credit is calculated by multiplying the total number of E-85 gallons sold by the retail dealer during the tax year by the following designated rates:

Calendar years 2006, 2007 and 2008	25 cents
Calendar years 2009 and 2010	20 cents
Calendar year 2011	10 cents
Calendar year 2012	9 cents
Calendar year 2013	8 cents
Calendar year 2014	7 cents
Calendar year 2015	6 cents
Calendar year 2016	5 cents
Calendar year 2017	4 cents
Calendar year 2018	3 cents
Calendar year 2019	2 cents
Calendar year 2020	1 cent

A taxpayer may claim the E-85 gasoline promotion tax credit even if the taxpayer also claims the ethanol blended gasoline tax credit provided in rule 52.19(422) for gallons sold prior to January 1, 2009, or the ethanol promotion tax credit provided in rule 52.36(422) for gallons sold on or after January 1, 2009, for the same tax year for the same ethanol gallons.

Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

EXAMPLE: A taxpayer operated one retail motor fuel site in 2006 and sold 200,000 gallons of gasoline, of which 160,000 gallons was ethanol blended gasoline. Of these 160,000 gallons, 1,000 gallons was E-85 gasoline. Taxpayer may claim the E-85 gasoline promotion tax credit on the 1,000 gallons of E-85 gasoline sold during 2006. Taxpayer is also entitled to claim the ethanol blended gasoline tax credit of two and one-half cents multiplied by 40,000 gallons, since this constitutes the gallons in excess of 60 percent of the total gasoline gallons sold for the 2006 tax year.

52.30(1) *Fiscal year filers.* For taxpayers whose tax year is not on a calendar year basis, the taxpayer may compute the tax credit on the gallons of E-85 gasoline sold during the year using the designated rates as shown above. Because the tax credit is repealed on January 1, 2021, a taxpayer whose tax year ends prior to December 31, 2020, can continue to claim the tax credit in the following tax year for any E-85 gallons sold through December 31, 2020. For a retail dealer whose tax year is not on a calendar year basis and who did not claim the E-85 credit on the previous return, the dealer may claim the credit for the current tax year for the period beginning on January 1 of the previous tax year until the last day of the previous tax year.

EXAMPLE: A taxpayer who is a retail dealer of gasoline has a fiscal year ending March 31, 2009. The taxpayer sold 2,000 gallons of E-85 gasoline for the period from April 1, 2008, through December 31, 2008, and sold 500 gallons of E-85 gasoline for the period from January 1, 2009, through March 31, 2009. The taxpayer is entitled to a total E-85 gasoline promotion tax credit of $600 for the fiscal year ending March 31, 2009, which consists of a $500 credit (2,000 gallons multiplied by 25 cents) for the period from April 1, 2008, through December 31, 2008, and a credit of $100 (500 gallons multiplied by 20 cents) for the period from January 1, 2009, through March 31, 2009.

EXAMPLE: A taxpayer who is a retail dealer of gasoline has a fiscal year ending April 30, 2006. The taxpayer sold 800 gallons of E-85 gasoline for the period from January 1, 2006, through April 30, 2006. The taxpayer is entitled to claim an E-85 gasoline promotion tax credit of $200 (800 gallons times 25 cents) on the taxpayer's Iowa income tax return for the period ending April 30, 2006. In lieu of claiming the credit on the return for the period ending April 30, 2006, the taxpayer can claim the E-85 gasoline promotion tax credit on the tax return for the period ending April 30, 2007, including all E-85 gallons sold for the period from January 1, 2006, through April 30, 2007.

52.30(2) *Allocation of credit to owners of a business entity.* If a taxpayer claiming the E-85 gasoline promotion tax credit is a partnership, limited liability company, S corporation, or an estate or trust electing

to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code section 422.33 as amended by 2006 Iowa Acts, House Files 2754 and 2759.

701—52.31(422) Biodiesel blended fuel tax credit. Effective for tax years beginning on or after January 1, 2006, a retail dealer of biodiesel blended fuel may claim a biodiesel blended fuel tax credit. "Biodiesel blended fuel" means a blend of biodiesel with petroleum-based diesel fuel which meets the standards provided in Iowa Code section 214A.2. The biodiesel blended fuel must be formulated with a minimum percentage of 2 percent by volume of biodiesel, if the formulation meets the standards provided by section 214A.2, to qualify for the tax credit. In addition, of the total gallons of diesel fuel sold by the retail dealer, 50 percent or more must be biodiesel blended fuel to be eligible for the tax credit for tax years beginning prior to January 1, 2009. For tax years beginning on or after January 1, 2009, the biodiesel blended fuel tax credit is calculated separately for each retail motor fuel site for which 50 percent or more of the total gallons of diesel fuel sold at the motor fuel site was biodiesel blended fuel.

The tax credit equals three cents multiplied by the qualifying number of biodiesel blended fuel gallons sold by the taxpayer during the tax year. For purposes of this rule, tank wagon sales are considered retail sales. The credit is calculated on Form IA8864.

Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

EXAMPLE: A taxpayer operated four retail motor fuel sites during 2006 and sold a combined total at all four sites of 100,000 gallons of diesel fuel, of which 55,000 gallons was biodiesel blended fuel containing a minimum percentage of 2 percent by volume of biodiesel. Because 50 percent or more of the diesel fuel sold was biodiesel blended fuel, the taxpayer may claim the biodiesel blended fuel tax credit totaling $1,650, which is 55,000 gallons multiplied by three cents.

EXAMPLE: A taxpayer operated two retail motor fuel sites during 2006, and each site sold 40,000 gallons of diesel fuel. One site sold 25,000 gallons of biodiesel blended fuel, and the other site sold 10,000 gallons of biodiesel blended fuel. The taxpayer would not be eligible for the biodiesel blended fuel tax credit because only 35,000 gallons of the total 80,000 gallons, or 43.75 percent of the total diesel fuel gallons sold, was biodiesel blended fuel. The 50 percent requirement is based on the aggregate number of diesel fuel gallons sold by the taxpayer, and the fact that one retail motor fuel site met the 50 percent requirement does not allow the taxpayer to claim the biodiesel blended fuel tax credit for the 2006 tax year. If the facts in this example had occurred during the 2009 tax year, the taxpayer could claim a biodiesel blended fuel tax credit totaling $750, which is 25,000 gallons multiplied by three cents, since one of the retail motor fuel sites met the 50 percent biodiesel blended fuel requirement.

52.31(1) *Fiscal year filers.* For taxpayers whose tax year is not on a calendar-year basis and whose tax year ends before December 31, 2006, the taxpayer may compute the tax credit on the gallons of biodiesel blended fuel sold during the period from January 1, 2006, through the end of the tax year, provided that 50 percent of all diesel fuel sold during that period was biodiesel blended fuel. Because the tax credit is repealed on January 1, 2012, a taxpayer whose tax year ends prior to December 31, 2011, may continue to claim the tax credit in the following tax year for any biodiesel blended fuel sold through December 31, 2011, provided that 50 percent of diesel fuel sold at qualifying retail motor fuel sites during that period was biodiesel blended fuel.

EXAMPLE: A taxpayer who operates one retail motor fuel site has a fiscal year ending April 30, 2006. The taxpayer sold 60,000 gallons of diesel fuel for the period from May 1, 2005, through April 30, 2006, of which 28,000 gallons was biodiesel blended fuel. However, for the period from January 1, 2006, through April 30, 2006, the taxpayer sold 20,000 gallons of diesel fuel, of which 12,000 gallons was biodiesel blended fuel. The taxpayer is entitled to claim the biodiesel blended fuel tax credit of $360 (12,000 gallons times 3 cents) on the taxpayer's Iowa income tax return for the period ending April 30, 2006, since more than 50 percent of all diesel fuel sold during the period from January 1, 2006, through April 30, 2006, was biodiesel blended fuel.

EXAMPLE: A taxpayer who operates one retail motor fuel site has a fiscal year ending June 30, 2006. The taxpayer sold 80,000 gallons of diesel fuel for the period from July 1, 2005, through June 30, 2006, of which 42,000 gallons was biodiesel blended fuel. However, for the period from January 1, 2006, through June 30, 2006, the taxpayer sold 40,000 gallons of diesel fuel, of which 19,000 gallons was biodiesel blended fuel. The taxpayer is not entitled to claim the biodiesel blended fuel tax credit on the taxpayer's Iowa income tax return for the period ending June 30, 2006, since less than 50 percent of all diesel fuel sold during the period from January 1, 2006, through June 30, 2006, was biodiesel blended fuel, even though more than 50 percent of all diesel fuel sold during the period from July 1, 2005, through June 30, 2006, was biodiesel blended fuel.

EXAMPLE: A taxpayer who operates one retail motor fuel site has a fiscal year ending February 28, 2012. The taxpayer sold 100,000 gallons of diesel fuel for the period from March 1, 2011, through February 28, 2012, of which 60,000 gallons was biodiesel blended fuel. For the period from March 1, 2011, through December 31, 2011, the taxpayer sold 85,000 gallons of diesel fuel, of which 50,000 gallons was biodiesel fuel. The taxpayer is entitled to claim the biodiesel blended fuel tax credit of $1,500 (50,000 gallons times 3 cents) on the taxpayer's Iowa income tax return for the period ending February 12, 2012, since the credit is computed only on gallons sold through December 31, 2011.

52.31(2) *Allocation of credit to owners of a business entity.* If a taxpayer claiming the biodiesel blended fuel tax credit is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code Supplement section 422.33 as amended by 2008 Iowa Acts, House File 2689, section 33.

701—52.32(422) Soy-based transformer fluid tax credit. Effective for tax periods ending after June 30, 2006, and beginning before January 1, 2009, an electric utility may claim a soy-based transformer fluid tax credit. An electric utility, which is a public utility, city utility, or electric cooperative which furnishes electricity, may claim a credit equal to the costs incurred during the tax year for the purchase and replacement costs relating to the transition from using nonsoy-based transformer fluid to using soy-based transformer fluid.

52.32(1) *Eligibility requirements for the tax credit.* All of the following conditions must be met for the electric utility to qualify for the soy-based transformer fluid tax credit.

a. The costs must be incurred after June 30, 2006, and before January 1, 2009.

b. The costs must be incurred in the first 18 months of the transition from using nonsoy-based transformer fluid to using soy-based transformer fluid.

c. The soy-based transformer fluid must be dielectric fluid that contains at least 98 percent soy-based products.

d. The costs of the purchase and replacement must not exceed $2 per gallon of soy-based transformer fluid used in the transition.

e. The number of gallons used in the transition must not exceed 20,000 gallons per electric utility, and the total number of gallons eligible for the credit must not exceed 60,000 gallons in the aggregate.

f. The electric utility shall not deduct for Iowa income tax purposes the costs incurred in the transition to using soy-based transformer fluid which are deductible for federal income tax purposes.

52.32(2) *Applying for the tax credit.* An electric utility must apply to the department for the soy-based transformer fluid tax credit. The application for the tax credit must be filed no later than 30 days after the close of the tax year for which the credit is claimed. The application must include the following information:

a. A copy of the signed purchase agreement or other agreement to purchase soy-based transformer fluid.

b. The number of gallons of soy-based transformer fluid purchased during the tax year, along with the cost per gallon of each purchase made during the tax year.

c. The name, address, and tax identification number of the electric utility.

d. The type of tax for which the credit will be claimed, and the first year in which the credits will be claimed.

e. If the application is filed by a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, a list of the partners, members, shareholders or beneficiaries of the entity. This list shall include the name, address, tax identification number and pro-rata share of earnings from the entity for each of the partners, members, shareholders or beneficiaries.

52.32(3) *Claiming the tax credit.* After the application is reviewed, the department will issue a tax credit certificate to the electric utility. The tax credit certificate will include the taxpayer's name, address and federal identification number, the tax type for which the credit will be claimed, the amount of the credit and the tax year for which the credit may be claimed. Once the tax credit certificate is issued, the credit may be claimed only against the type of tax reflected on the certificate. If the department refuses to issue the tax credit certificate, the taxpayer shall be notified in writing; and the taxpayer will have 60 days from the date of denial to file a protest in accordance with rule 701—7.41(17A).

If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners, members, shareholders or beneficiaries based on the partner's, member's, shareholder's or beneficiary's pro-rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust.

Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

This rule is intended to implement Iowa Code Supplement section 422.33 as amended by 2008 Iowa Acts, Senate File 572.

701—52.33(175,422) Agricultural assets transfer tax credit. Effective for tax years beginning on or after January 1, 2007, an owner of agricultural assets that rents assets to qualified beginning farmers may claim an agricultural assets transfer tax credit for Iowa corporation income tax. The credit is equal to 5 percent of the rental income received by the owner for cash rental agreements, and the credit is equal to 15 percent of the rental income received by the owner for commodity share agreements. The administrative rules for the agricultural assets transfer tax credit for the Iowa agricultural development authority may be found under 25—Chapter 6.

To qualify for the tax credit, an owner of agricultural assets must enter into a lease or rental agreement with a beginning farmer for a term of at least two years, but not more than five years. Both the owner of agricultural assets and the beginning farmer must meet certain qualifications set forth by the Iowa agricultural development authority, and the beginning farmer must be eligible to receive financial assistance under Iowa Code section 175.12.

The Iowa agricultural development authority will issue a tax credit certificate to the owner of agricultural assets which will include the name, address and tax identification number of the owner, the amount of the credit, and the tax period for which the credit may be applied. To claim the tax credit, the owner must attach the tax credit certificate to the tax return for the tax period set forth on the certificate.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier. The tax credit shall not be carried back to a tax year prior to the year in which the owner redeems the credit. The credit is not transferable to any other person other than the taxpayer's estate or trust upon the death of the taxpayer.

If an owner of agricultural assets is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

The lease or rental agreement may be terminated by either the owner or the beginning farmer. If the agricultural development authority determines that the owner is not at fault for the termination, the authority will not issue a tax credit certificate for subsequent years, but any prior tax credit certificates issued will be allowed. If the authority determines that the owner is at fault for the termination, any prior tax credit certificates will be disallowed. The amount of tax credits previously allowed will be

recaptured, and the owner will be required to repay the entire amount of tax credits previously claimed on Iowa returns.

This rule is intended to implement Iowa Code sections 175.37 and 422.33.

701—52.34(15,422) Film qualified expenditure tax credit. Effective for tax years beginning on or after January 1, 2007, a film qualified expenditure tax credit is available for corporation income tax. The tax credit is equal to 25 percent of the taxpayer's qualified expenditures in a film, television, or video project registered with the film office of the Iowa department of economic development (IDED). The administrative rules for the film qualified expenditure tax credit for IDED may be found at 261—Chapter 36.

52.34(1) *Qualified expenditures.* A qualified expenditure is a payment to an Iowa resident or an Iowa-based business for the sale, rental or furnishing of tangible personal property or services directly related to the registered project. The qualified expenditures include, but are not limited to, the following:

1. Aircraft.
2. Vehicles.
3. Equipment.
4. Materials.
5. Supplies.
6. Accounting services.
7. Animals and animal care services.
8. Artistic and design services.
9. Graphics.
10. Construction.
11. Data and information services.
12. Delivery and pickup services.
13. Labor and personnel, excluding the director, producers, or cast members other than extras and stand-ins.
14. Lighting services.
15. Makeup and hairdressing services.
16. Film.
17. Music.
18. Photography.
19. Sound.
20. Video and related services.
21. Printing.
22. Research.
23. Site fees and rental.
24. Travel related to Iowa distant locations.
25. Trash removal and cleanup.
26. Wardrobe.

A detailed list of all qualified expenditures for each of these categories is available on Form Z, Schedule of Qualified Expenses, which is available from the film office of IDED.

52.34(2) *Claiming the tax credit.* Upon completion of the registered project in Iowa, the taxpayer must submit to the film office a completed Form Z, Schedule of Qualified Expenses, or an alternative to Form Z in a format approved by IDED prior to production, listing the qualified expenditures. Upon verification of the qualified expenditures, IDED will issue a tax credit certificate to the taxpayer. The certificate will list the taxpayer's name, address, and tax identification number; the date of project completion; the amount of the credit; the tax period for which the credit may be applied; and the type of tax for which the credit will be applied.

If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners,

members, shareholders or beneficiaries based on each partner's, member's, shareholder's or beneficiary's pro-rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust.

To claim the tax credit, the taxpayer must attach the tax credit certificate to the tax return for the tax period set forth on the certificate. Any tax credit in excess of the tax liability may be carried forward for five years or until the tax credit is used, whichever is the earlier. The tax credit cannot be carried back to a tax year prior to the year in which the taxpayer claimed the tax credit.

52.34(3) *Transfer of the film qualified expenditure tax credit.* The film qualified expenditure tax credit may be transferred no more than two times to any person or entity.

Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department of revenue, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department of revenue will issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the film qualified expenditure tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries. The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have the same effective taxable year as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

This rule is intended to implement 2007 Iowa Acts, House File 892, section 3, and Iowa Code section 422.33 as amended by 2007 Iowa Acts, House File 892, section 7.

701—52.35(15,422) Film investment tax credit. Effective for tax years beginning on or after January 1, 2007, a film investment tax credit is available for corporation income tax. The tax credit is equal to 25 percent of the taxpayer's investment in a film, television, or video project registered with the film office of the Iowa department of economic development (IDED). The administrative rules for the film investment tax credit for IDED may be found at 261—Chapter 36.

52.35(1) *Claiming the tax credit.* Upon completion of the project in Iowa and verification of the investment in the project, IDED will issue a tax credit certificate to the taxpayer. The certificate will list the taxpayer's name, address, and tax identification number; the date of project completion; the amount of the credit; the tax period for which the credit may be applied; and the type of tax for which the credit will be applied.

If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners, members, shareholders or beneficiaries based on each partner's, member's, shareholder's or beneficiary's pro-rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust.

To claim the tax credit, the taxpayer must attach the tax credit certificate to the tax return for the tax period set forth on the certificate. Any tax credit in excess of the tax liability may be carried forward for five years or until the tax credit is used, whichever is the earlier. The tax credit cannot be carried back to a tax year prior to the year in which the taxpayer claimed the tax credit. In addition, a taxpayer cannot claim the film investment tax credit for qualified expenditures for which the film expenditure tax credit set forth in rule 701—52.34(15,422) is claimed.

The total of all film investment tax credits for a particular project cannot exceed 25 percent of the qualified expenditures as set forth in subrule 52.34(1) for the particular project. If the amount of investment exceeds the qualified expenditures, the tax credit will be allocated proportionately. For

example, if three investors each invested $100,000 in a project but the qualified expenditures in Iowa only totaled $270,000, each investor would receive a tax credit based on a $90,000 investment amount.

52.35(2) *Transfer of the film investment tax credit.* The film investment tax credit may be transferred no more than two times to any person or entity.

Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department of revenue, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department of revenue will issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the film investment tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries. The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have the same effective taxable year as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

This rule is intended to implement 2007 Iowa Acts, House File 892, section 3, and Iowa Code section 422.33 as amended by 2007 Iowa Acts, House File 892, section 7.

701—52.36(422) Ethanol promotion tax credit. Effective for tax years beginning on or after January 1, 2009, a retail dealer of gasoline may claim an ethanol promotion tax credit. For purposes of this rule, tank wagon sales are considered retail sales. The ethanol promotion tax credit is computed on Form IA137.

52.36(1) *Definitions.* The following definitions are applicable to this rule:

"Biodiesel gallonage" means the total number of gallons of biodiesel which the retail dealer sells from motor fuel pumps during a determination period. For example, 5,000 gallons of biodiesel blended fuel with a 2 percent by volume of biodiesel sold during a determination period results in a biodiesel gallonage of 100 (5,000 times 2%).

"Biofuel distribution percentage" means the sum of the retail dealer's total ethanol gallonage plus the retail dealer's total biodiesel gallonage expressed as a percentage of the retail dealer's total gasoline gallonage.

"Biofuel threshold percentage" is dependent on the aggregate number of gallons of motor fuel sold by a retail dealer during a determination period, as set forth below:

Determination Period	More than 200,000 Gallons Sold by Retail Dealer	200,000 Gallons or Less Sold by Retail Dealer
2009	10%	6%
2010	11%	6%
2011	12%	10%
2012	13%	11%
2013	14%	12%
2014	15%	13%
2015	17%	14%
2016	19%	15%
2017	21%	17%

2018	23%	19%
2019	25%	21%
2020	25%	25%

"Biofuel threshold percentage disparity" means the positive percentage difference between the retail dealer's biofuel threshold percentage and the retail dealer's biofuel distribution percentage. For example, if a retail dealer that sells more than 200,000 gallons of motor fuel in 2009 has a biofuel distribution percentage of 8 percent, the biofuel threshold percentage disparity equals 2 percent (10% minus 2%).

"Determination period" means any 12-month period beginning on January 1 and ending on December 31.

"Ethanol gallonage" means the total number of gallons of ethanol which the retail dealer sells from motor fuel pumps during a determination period. For example, 10,000 gallons of ethanol blended gasoline formulated with a 10 percent by volume of ethanol sold during a determination period results in an ethanol gallonage of 1,000 (10,000 gallons times 10%).

"Gasoline gallonage" means the total number of gallons of gasoline sold by the retail dealer during a determination period.

52.36(2) *Calculation of tax credit.*

a. The tax credit is calculated by multiplying the retail dealer's total ethanol gallonage by the tax credit rate, which is adjusted based upon the retail dealer's biofuel threshold percentage disparity. The tax credit rate is set forth below:

Biofuel Threshold Percentage Disparity	Tax Credit Rate Per Gallon
0%	6.5 cents
0.01% to 2.00%	4.5 cents
2.01% to 4.00%	2.5 cents
4.01% or more	0 cents

b. For use in calculating a retail dealer's total ethanol gallonage, the department is required to establish a schedule regarding the average amount of ethanol contained in E-85 gasoline.

c. A taxpayer may claim the ethanol promotion tax credit even if the taxpayer also claims the E-85 gasoline promotion tax credit provided in rule 52.30(422) for the same tax year for the same ethanol gallons.

d. The tax credit must be calculated separately for each retail motor fuel site operated by the taxpayer. The biofuel threshold percentage disparity of the taxpayer is computed on a statewide basis based on the total ethanol gallonage sold in Iowa. The taxpayer must determine the ethanol gallonage sold at each retail motor fuel site and multiply this ethanol gallonage by the applicable tax credit rate based on the biofuel threshold percentage disparity to calculate the ethanol promotion tax credit.

e. Any tax credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming a refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

52.36(3) *Fiscal year filers.* For taxpayers whose tax year is not on a calendar year basis, the taxpayer may compute the ethanol promotion tax credit on the total ethanol gallonage sold during the year using the designated tax credit rates as shown in subrule 52.36(2), paragraph *"a."* Because the tax credit is repealed on January 1, 2021, a taxpayer whose tax year ends prior to December 31, 2020, may continue to claim the tax credit in the following tax year for the total ethanol gallonage sold through December 31, 2020. For a taxpayer whose tax year is not on a calendar year basis and that did not claim the ethanol

promotion tax credit on the previous return, the taxpayer may claim the tax credit for the current tax year for the period beginning on January 1 of the previous tax year until the last day of the previous tax year.

52.36(4) *Allocation of tax credit to owners of a business entity.* If a taxpayer claiming the ethanol promotion tax credit is a partnership, limited liability company, S corporation, estate, or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by the individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, estate, or trust.

52.36(5) *Examples.* The following noninclusive examples illustrate how this rule applies:

EXAMPLE 1. A taxpayer that is a retail dealer of gasoline operates only one motor fuel site in Iowa. The number of gallons of gasoline sold at this site in 2009 equals 100,000 gallons. This consisted of 5,000 gallons of E-85 gasoline, 80,000 gallons of E-10 (10% ethanol blended gasoline) and 15,000 gallons not containing ethanol. The average ethanol content of E-85 gasoline is assumed to be 79%. The taxpayer also sold at this site during 2009 15,000 gallons of diesel fuel, of which 5,000 gallons was B-2 (2% biodiesel). The ethanol gallonage is 11,950 (5,000 E-85 gallons times 79% equals 3,950; 80,000 E-10 gallons times 10% equals 8,000; and thus 3,950 plus 8,000 equals 11,950). The biodiesel gallonage sold is 100, or 5,000 times 2%. The sum of 11,950 and 100, or 12,050, is divided by the total gasoline gallonage of 100,000 to arrive at a biofuel distribution percentage of 12.05%. Since this exceeds the biofuel threshold percentage of 6% for a retail dealer selling 200,000 gallons or less, the biofuel threshold disparity percentage is 0%. This results in an ethanol promotion tax credit of 6.5 cents times 11,950, or $776.75.

In addition, the taxpayer is entitled to claim the E-85 gasoline promotion tax credit equal to 20 cents multiplied by 5,000 gallons, or $1,000.

EXAMPLE 2. A taxpayer that is a retail dealer of gasoline operates only one motor fuel site in Iowa. The number of gallons of gasoline sold at this site in 2010 equals 300,000 gallons. This consisted of 10,000 gallons of E-85 gasoline, 230,000 gallons of E-10 (10% ethanol blended gasoline) and 60,000 gallons not containing ethanol. The average ethanol content of E-85 gasoline is assumed to be 79%. The taxpayer also sold at this site during 2010 60,000 gallons of diesel fuel, of which 25,000 gallons was B-2 (2% biodiesel). The ethanol gallonage is 30,900 (10,000 E-85 gallons times 79% equals 7,900; 230,000 E-10 gallons times 10% equals 23,000; and thus 7,900 plus 23,000 equals 30,900). The biodiesel gallonage sold is 500, or 25,000 times 2%. The sum of 30,900 and 500, or 31,400, is divided by the total gasoline gallonage of 300,000 to arrive at a biofuel distribution percentage of 10.47%. Since this is less than the biofuel threshold percentage of 11% for a retail dealer selling more than 200,000 gallons, the biofuel threshold disparity percentage is .53%. This results in an ethanol promotion tax credit of 4.5 cents times 30,900, or $1,390.50.

In addition, the taxpayer is entitled to claim the E-85 gasoline promotion tax credit equal to 20 cents multiplied by 10,000 gallons, or $2,000.

EXAMPLE 3. A taxpayer that is a retail dealer of gasoline operates three motor fuel sites in Iowa during 2009, and each site sold 80,000 gallons of gasoline. Sites A and B each sold 70,000 gallons of E-10 (10% ethanol blended gasoline) and 10,000 gallons not containing ethanol. Site C sold 60,000 gallons of E-10, 10,000 gallons of E-85, and 10,000 gallons not containing ethanol. The average ethanol content of E-85 gasoline is assumed to be 79%. The retail dealer did not sell any diesel fuel at any of the motor fuel sites. The ethanol gallonage is 27,900, as shown below:

Site A – 70,000 times 10% equals	7,000
Site B – 70,000 times 10% equals	7,000
Site C – 60,000 times 10% equals	6,000
Site C – 10,000 times 79% equals	7,900
Total	27,900

The ethanol gallonage of 27,900 is divided by the gasoline gallonage of 240,000 to arrive at a biofuel distribution percentage of 11.63%. Since this exceeds the biofuel threshold percentage of 10% for a retail dealer selling more than 200,000 gallons, the biofuel threshold disparity percentage is 0%. The credit

is computed separately for each motor fuel site, and the ethanol promotion credit equals $1,813.50, as shown below:

Site A – 7,000 times 6.5 cents equals	$455.00
Site B – 7,000 times 6.5 cents equals	$455.00
Site C – 13,900 times 6.5 cents equals	$903.50
Total	$1,813.50

Since the biofuel distribution percentage and the biofuel threshold percentage disparity are computed on a statewide basis for all gallons sold in Iowa, the 6.5 cent tax credit rate is applied to the total ethanol gallonage, even if Sites A and B did not meet the biofuel threshold percentage of 10% for 2009.

In addition, the taxpayer is entitled to claim the E-85 gasoline promotion tax credit equal to 20 cents multiplied by 10,000 gallons, or $2,000.

EXAMPLE 4. A taxpayer that is a retail dealer of gasoline has a fiscal year ending March 31, 2011, and operates one motor fuel site in Iowa. The taxpayer sold more than 200,000 gallons of gasoline during the 2010 calendar year and expects to sell more than 200,000 gallons of gasoline during the 2011 calendar year. The ethanol gallonage is 30,000 for the period from April 1, 2010, through December 31, 2010, and the ethanol gallonage is 8,000 for the period from January 1, 2011, through March 31, 2011. The biofuel distribution percentage is 11.5% for the period from April 1, 2010, through December 31, 2010, and the biofuel distribution percentage is 11.8% for the period from January 1, 2011, through March 31, 2011. This results in a biofuel threshold percentage disparity of 0% (11.0 minus 11.5) for the period from April 1, 2010, through December 31, 2010, and a biofuel threshold percentage disparity of .2% (12.0 minus 11.8) for the period from January 1, 2011, through March 31, 2011. The taxpayer is entitled to an ethanol promotion tax credit of $2,310 for the fiscal year ending March 31, 2011, as shown below:

30,000 times 6.5 cents equals	$1,950
8,000 times 4.5 cents equals	360
Total	$2,310

EXAMPLE 5. A taxpayer that is a retail dealer of gasoline has a fiscal year ending April 30, 2009, and operates one motor fuel site in Iowa. The taxpayer expects to sell more than 200,000 gallons of gasoline during the 2009 calendar year. The ethanol gallonage is 50,000 gallons for the period from January 1, 2009, through April 30, 2009. The biofuel distribution percentage is 7.7% for the period from January 1, 2009, through April 30, 2009, which results in a biofuel threshold percentage disparity of 2.3% (10.0 minus 7.7). The taxpayer is entitled to claim an ethanol promotion tax credit of $1,250 (50,000 gallons times 2.5 cents) on the taxpayer's Iowa income tax return for the period ending April 30, 2009.

In lieu of claiming the credit on the return for the period ending April 30, 2009, the taxpayer may claim the ethanol promotion tax credit on the tax return for the period ending April 30, 2010, including the ethanol gallonage for the period from January 1, 2009, through April 30, 2010. In this case, the taxpayer will compute the biofuel distribution percentage for the period from January 1, 2009, through December 31, 2009, to determine the proper tax credit rate to be applied to the ethanol gallonage for the period from January 1, 2009, through December 31, 2009.

This rule is intended to implement Iowa Code Supplement section 422.33.

701—52.37(422) Charitable conservation contribution tax credit. Effective for tax years beginning on or after January 1, 2008, a charitable conservation contribution tax credit is available for corporation income tax which is equal to 50 percent of the fair market value of a qualified real property interest located in Iowa that is conveyed as an unconditional charitable donation in perpetuity by a taxpayer to a qualified organization exclusively for conservation purposes.

52.37(1) *Definitions.* The following definitions are applicable to this rule:

"Conservation purpose" means the same as defined in Section 170(h)(4) of the Internal Revenue Code, with the exception that a conveyance of land for open space for the purpose of fulfilling density requirements to obtain subdivision or building permits is not considered a conveyance for a conservation purpose.

"Qualified organization" means the same as defined in Section 170(h)(3) of the Internal Revenue Code.

"Qualified real property interest" means the same as defined in Section 170(h)(2) of the Internal Revenue Code. Conservation easements and bargain sales are examples of a qualified real property interest.

52.37(2) *Computation of the credit.* The credit equals 50 percent of the fair market value of the qualified real property interest. There are numerous federal revenue regulations, rulings, court cases and other provisions relating to the determination of the value of a qualified real property interest, and these are equally applicable in determining the amount of the charitable conservation contribution tax credit.

The maximum amount of the tax credit is $100,000. The amount of the contribution for which the tax credit is claimed shall not be claimed as a deduction for charitable contributions for Iowa income tax purposes.

52.37(3) *Claiming the tax credit.* The tax credit is claimed on Form IA 148, Tax Credits Schedule. The taxpayer must attach a copy of federal Form 8283, Noncash Charitable Contributions, which reflects the calculation of the fair market value of the real property interest, to the Iowa return for the year in which the contribution is made. If a qualified appraisal of the property or other relevant information is required to be attached to federal Form 8283 for federal tax purposes, the appraisal and other relevant information must also be attached to the Iowa return.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following 20 years or until used, whichever is the earlier.

If the taxpayer claiming the credit is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

52.37(4) *Examples.* The following noninclusive examples illustrate how this rule applies:

EXAMPLE 1: A taxpayer conveys a real property interest with a fair market value of $150,000 to a qualified organization during 2008. The tax credit is equal to $75,000, or 50 percent of the $150,000 fair market value of the real property. The taxpayer cannot claim the $150,000 as a deduction for charitable contributions on the Iowa corporation income tax return for 2008.

EXAMPLE 2: A taxpayer conveys a real property interest with a fair market value of $500,000 to a qualified organization during 2009. The tax credit is limited to $100,000, which equates to $200,000 of the contribution being eligible for the tax credit. The remaining amount of $300,000 ($500,000 less $200,000) can be claimed as a deduction for charitable contributions on the Iowa corporation income tax return for 2009.

This rule is intended to implement Iowa Code Supplement section 422.33 as amended by 2008 Iowa Acts, House File 2700, section 63.

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◊ Two or more ARCs

CHAPTER 53
DETERMINATION OF NET INCOME
[Prior to 12/17/86, Revenue Department[730]]

701—53.1(422) Computation of net income for corporations. Net income for state purposes shall mean federal taxable income, before deduction for net operating losses, as properly computed under the Internal Revenue Code, and shall include the adjustments in 53.2(422) to 53.13(422) and 53.17(422) to 53.25(422). The remaining provisions of this rule and 53.14(422) to 53.16(422) shall also be applicable in determining net income.

In the case of a corporation which is a member of an affiliated group of corporations filing a consolidated income tax return for the taxable year for federal income tax purposes, but files a separate return for state purposes, taxable income as properly computed for federal purposes is determined as if the corporation had filed a separate return for federal income tax purposes for the taxable year and each preceding taxable year for which it was a member of an affiliated group. For purposes of this paragraph, the taxpayer's separate taxable income shall be determined as if the election provided by Section 243(b)(2) of the Internal Revenue Code had been in effect for all those years.

When a federal short period return is filed and the federal taxable income is required to be adjusted to an annual basis, the Iowa taxable income shall also be adjusted to an annual basis. The tax liability for a short period is computed by multiplying the taxable income for the short period by 12 and dividing the result by the number of months in the short period. The tax is determined on the resulting total as if it were the taxable income, and the tax computed is divided by 12 and multiplied by the number of months in the short period. This adjustment shall apply only to income attributable to business carried on within the state of Iowa.

This rule is intended to implement Iowa Code section 422.35.

701—53.2(422) Net operating loss carrybacks and carryovers. In years beginning after December 31, 1954, net operating losses shall be allowed or allowable for Iowa corporation income tax purposes to the same extent they are allowed or allowable for federal corporation income tax purposes for the same period, provided the following adjustments are made:

53.2(1) *Additions to income.*

a. Refunds of federal income taxes due to net operating loss and investment credit carrybacks or carryovers shall be reflected in the following manner:

(1) Accrual basis taxpayers shall accrue refunds of federal income taxes to the year in which the net operating loss occurs.

(2) Cash basis taxpayers shall reflect refunds of federal income taxes in the return for the year in which the refunds are received.

b. Iowa income tax deducted on the federal return for the loss year shall be reflected as an addition to income in the year of the loss.

c. Interest and dividends received in the year of the loss on federally tax-exempt securities shall be reflected as additions to income in the year of the loss.

53.2(2) *Reductions of income.*

a. Federal income tax paid or accrued during the year of the net operating loss shall be reflected to the extent allowed by law as an additional deduction in the year of the loss.

b. Iowa income tax refunds reported as income for federal return purposes in the loss year shall be reflected as reductions of income in the year of the loss.

c. Interest and dividends received from federal securities during the loss year shall be reflected in the year of the loss as a reduction of income.

53.2(3) If a corporation does business both within and without Iowa, it shall make adjustments reflecting the apportionment and allocation of its operating loss on the basis of business done within and without the state of Iowa after completing the provisions of subrules 53.2(1) and 53.2(2).

a. After making the adjustments to federal taxable income as provided in 53.2(1) and 53.2(2), the total net allocable income or loss shall be added to or deducted from, as the case may be, the net

federal income or loss as adjusted for Iowa tax purposes. The resulting income or loss so determined shall be subject to apportionment as provided in rules 701—54.5(422), 54.6(422) and 54.7(422). The apportioned income or loss shall be added or deducted, as the case may be, to the amount of net allocable income or loss properly attributable to Iowa. This amount is the taxable income or net operating loss attributable to Iowa for that year.

b. The net operating loss attributable to Iowa, as determined in rule 53.2(422), shall be subject to a 3-year carryback and a 15-year carryover provision. This loss shall be carried back or over to the applicable year as a reduction or part of a reduction of the net income attributable to Iowa for that year. However, an Iowa net operating loss shall not be carried back to a year in which the taxpayer was not doing business in Iowa. If the election under Section 172(b)(3) of the Internal Revenue Code is made, the Iowa net operating loss shall be carried forward 15 taxable years. A copy of the federal election made under Section 172(b)(3) of the Internal Revenue Code must be attached to the Iowa corporation income tax return filed with the department.

c. For tax years beginning after August 5, 1997, a net operating loss attributable to Iowa, as determined in rule 701—53.2(422), incurred in a presidentially declared disaster area by a corporation engaged in a small business or in the trade or business of farming must be carried back 3 taxable years and carried forward 20 taxable years. All other net operating losses attributable to Iowa must be carried back 2 taxable years and carried forward 20 taxable years. This loss shall be carried back or over to the applicable year as a reduction or part of a reduction of the net income attributable to Iowa for that year. However, an Iowa net operating loss shall not be carried back to a year in which the taxpayer was not doing business in Iowa. If the election under Section 172(b)(3) of the Internal Revenue Code is made, the Iowa net operating loss shall be carried forward 20 taxable years. A copy of the federal election made under Section 172(b)(3) of the Internal Revenue Code must be attached to the Iowa corporation income tax return filed with the department.

d. For tax years beginning on or after January 1, 1998, for a taxpayer who is engaged in the trade or business of farming as defined in Section 263A(e)(4) of the Internal Revenue Code and has a loss from farming as defined in Section 172(b)(1)(F) of the Internal Revenue Code including modifications prescribed by rule by the director, the Iowa loss from the trade or business of farming is a net operating loss which may be carried back five taxable years prior to the taxable year of the loss. However, if a taxpayer has a net operating loss from the trade or business of farming for a taxable year beginning in 1998 or for a taxable year after 1998 and makes a valid election for federal income tax purposes to carry back the net operating loss two years, or three years if the loss was in a presidentially declared disaster area or related to a casualty or theft loss, the net operating loss must be carried back two years or three years for Iowa income tax purposes. A copy of the federal election made under Section 172(i)(3) of the Internal Revenue Code for the two-year or three-year carryback in lieu of the five-year carryback must be attached to the Iowa return or the Form IA 1139 Farm, Application for Refund Due to the Carryback of Corporate Farming Losses, to show why the carryback was two years or three years instead of five years. However, an Iowa net operating loss shall not be carried back to a year in which the taxpayer was not doing business in Iowa.

When the taxpayer carries on more than one trade or business within a corporate shell or files a consolidated Iowa corporation income tax return, the income or loss from each trade or business must be combined to determine the amount of net operating loss that exists and whether it is a net operating loss from the trade or business of farming.

EXAMPLE 1. The taxpayer carries on the trade or business of farming and also the trade or business of trucking for entities outside the corporate shell. For the tax year, the taxpayer had a net operating loss from farming of $25,000 and net income from trucking of $10,000 for a net operating loss for the year of $15,000 which is a net operating loss from the trade or business of farming which may be carried back 5 tax years and forward 20 tax years.

EXAMPLE 2. The taxpayer carries on the trade or business of farming and the trade or business of construction. For the tax year, the taxpayer had income from farming of $12,000 and a net operating loss from construction of $45,000 for a net operating loss for the year of $33,000 which is a net operating

loss from the trade or business of construction which may be carried back 2 tax years and forward 20 tax years.

EXAMPLE 3. The taxpayer carries on the trade or business of farming and the trade or business of construction. During the tax year, the taxpayer had a net operating loss of $18,000 from farming and a net operating loss of $9,000 from construction for a total net operating loss of $27,000. Of this net operating loss, $18,000 is from farming and may be carried back 5 years and forward 20 years and $9,000 is from construction and may be carried back 2 years and forward 20 years.

53.2(4) No part of a net operating loss for a year which the corporation was not subject to the imposition of Iowa corporation income tax shall be included in the Iowa net operating loss deduction applicable to any year prior to or subsequent to the year of the loss. To be deductible, a net operating loss must be sustained from that portion of the corporation's trade or business carried on in Iowa.

53.2(5) No part of a net operating loss may be carried back or carried forward if the carryback or carryforward would be disallowed for federal income tax purposes under Sections 172(b)(1)(E) and 172(h) of the Internal Revenue Code. This provision is effective for tax years beginning on or after January 1, 1989.

53.2(6) The carryover of Iowa net operating losses after reorganizations or mergers is limited to the same extent as the carryover of a net operating loss is limited under the provisions of Sections 381 through 386 of the Internal Revenue Code and regulations thereunder or any other section of the Internal Revenue Code or regulations thereunder. Where the taxpayer files as a part of a consolidated income tax return for federal income tax purposes, but a separate return for Iowa income tax purposes, the limitation on an Iowa net operating loss carryover must be determined as though a separate income tax return was filed for federal income tax purposes.

This rule is intended to implement Iowa Code section 422.35 as amended by 1999 Iowa Acts, chapter 95.

701—53.3(422) Capital loss carryback.

53.3(1) Capital losses shall be allowed or allowable for Iowa corporation income tax purposes to the same extent they are allowed or allowable for federal corporation income tax purposes. Capital loss carrybacks shall be treated as an adjustment to federal taxable income to arrive at net allocable and apportionable income.

a. For accrual-basis taxpayers the federal income tax refund shall not be accrued to the loss year but rather treated as a reduction in federal income tax paid in the carryback year.

b. Cash-basis taxpayers shall include the federal income tax refund in Iowa taxable income in the year received.

c. Where the taxpayer files a separate Iowa corporation income tax return but files as part of a federal consolidated income tax return, the portion of the federal refund due to a capital loss carryback attributable to the taxpayer shall be calculated by computing the federal tax deduction in the carryback year as follows:

$$\frac{\text{Separate Company Income - Separate Company Capital Loss Carryback}}{\text{Sum of the Incomes of Profit Companies - Sum of Separate Company Capital Loss Carrybacks to Profit Companies}} \times \text{Consolidated Federal Tax after Capital Loss Carryback} \times 50\%$$

53.3(2) When the carryback year has both allocable and apportionable capital gains, the capital loss carryback shall be applied pro rata on a percentage basis of the specific gain to the total gains.

EXAMPLE: Assume a taxpayer has a 1973 capital loss carryback available of $2000. The loss would be applied in the following manner:

1970 Total Capital Gain	1970 Allocable Gain		1970 Apportionable Gain
$16,000	$4,000		$12,000
Allocable gain	–$4,000		
Total capital gain	–$16,000	=	¼ or 25% of carryback to allocable gain

1970 allocable capital gain after application of loss carryback:

$4,000 less ($2,000 × 25%) = $3,500 net allocable capital gain.

This rule is intended to implement Iowa Code sections 422.35 and 422.37.

701—53.4(422) Net operating and capital loss carrybacks and carryovers. If the taxpayer has both a net operating loss and a capital loss carryback to a prior tax year, the capital loss shall be carried back first and then the new operating loss offset against any remaining income.

This rule is intended to implement Iowa Code section 422.35.

701—53.5(422) Interest and dividends from federal securities. See rule 701—40.2(422) for a discussion of the exempt status of interest and dividends from federal securities.

This rule is intended to implement Iowa Code section 422.35.

701—53.6(422) Interest and dividends from foreign securities, and securities of state and their political subdivisions. Interest and dividends from foreign securities and from securities of state and their political subdivisions are to be included in Iowa taxable income. Certain types of interest and dividends, because of specific exemption, are not includable in income for federal tax purposes. To the extent such income has been excluded for federal income tax purposes, unless the item of income is specifically exempted from state taxation by the laws or constitution of Iowa or of the United States, it must be added to Iowa taxable income. See rule 701—40.3(422) for a listing of obligations of the state of Iowa and its political subdivisions, the interest from which is exempt from Iowa corporation income tax. For the tax treatment of interest or dividends from regulated investment companies (mutual funds) that invest in obligations of the type discussed in rule 701—40.3(422), see rule 701—40.52(422).

For tax years beginning on or after January 1, 1987, add dividends received from regulated investment companies exempt from federal tax under Section 852(b)(5) of the Internal Revenue Code and subtract the loss on the sale or exchange of a share of a regulated investment company held for six months or less to the extent the loss was disallowed under Section 852(b)(4)(B) of the Internal Revenue Code.

For tax years beginning on or after January 1, 2001, add, to the extent not already included, income from the sale of obligations of the state of Iowa and its political subdivisions. Gains or losses from the sale or other disposition of bonds issued by the state of Iowa or its political subdivisions shall be included in Iowa taxable income unless the law authorizing these obligations specifically exempts the income from the sale or other disposition from Iowa corporation income tax.

This rule is intended to implement Iowa Code section 422.35 as amended by 2001 Iowa Acts, House File 715.

701—53.7(422) Safe harbor leases. For tax years ending after January 1, 1981, deductions in determining federal taxable income for sale-leaseback agreements taken as a result of the application of Section 168(f)(8) of the Internal Revenue Code shall be added in determining Iowa taxable income to the extent such deductions cannot be taken under provisions of Sections 162, 163 and 167 of the Internal Revenue Code. The lessor shall add depreciation and interest expense, and the lessee shall

add rental expense. When the deduction for depreciation is not allowed under a previous provision of this rule, the lessee shall be allowed a deduction for depreciation on any property involved in a sale-leaseback agreement. This depreciation shall be computed in accordance with Section 168(a) of the Internal Revenue Code. Income received as a result of a sale-leaseback agreement shall be deducted in determining Iowa taxable income. The lessee shall deduct interest income and the lessor shall deduct rent income. Each lessor and lessee corporation shall include a copy of federal Form 6793 in its Iowa corporation income tax return for the year in which a safe harbor lease is entered into.

This rule is intended to implement Iowa Code section 422.35.

701—53.8(422) Additions to federal taxable income.

53.8(1) *Disallowance of private club expenses.* Rescinded IAB 11/24/04, effective 12/29/04.

53.8(2) *Percentage depletion.* For tax years beginning on or after January 1, 1986, add the amount that percentage depletion of an oil, gas, or geothermal well computed under Section 613 of the Internal Revenue Code is in excess of cost depletion computed under Section 611 of the Internal Revenue Code.

This rule is intended to implement Iowa Code section 422.35 as amended by 1994 Iowa Acts, Senate File 2215.

701—53.9(422) Gains and losses on property acquired before January 1, 1934. Where property was acquired prior to January 1, 1934, the basis as of January 1, 1934, for determining capital or other gains or losses is the higher of cost, adjusted for depreciation allowed or allowable to January 1, 1934, or fair market value as of that date. *City National Bank of Clinton v. Iowa State Tax Commission,* 251 Iowa 603, 102 N.W.2d 381 (1960).

If as a result of this provision a basis is to be used for purposes of Iowa corporation income tax which is different from the basis used for purposes of federal income tax, appropriate adjustment must be made and detailed schedules supplied in the computation of Iowa taxable income.

This rule is intended to implement Iowa Code section 422.35.

701—53.10(422) Work opportunity tax and alcohol fuel credit. Where provided for in the Internal Revenue Code, as detailed below, a deduction shall be allowed for the amount of credit to the extent that the credit increased federal adjusted gross income.

53.10(1) For tax years beginning on or after January 1, 1977, the amount of credit allowable for federal work opportunity tax credit as provided for in Section 51 of the Internal Revenue Code shall be a deduction from Iowa taxable income to the extent the credit increased income.

53.10(2) For tax periods beginning on or after January 1, 1980, the amount of credit allowable for the federal alcohol fuels credit as provided for in Section 40 of the Internal Revenue Code shall be a deduction from Iowa taxable income to the extent the credit increased income.

This rule is intended to implement Iowa Code section 422.35 as amended by 1997 Iowa Acts, Senate File 129.

701—53.11(422) Additional deduction for wages paid or accrued for work done in Iowa by certain individuals. For tax years beginning on or after January 1, 1984, a taxpayer which is considered to be a small business corporation, as defined by subrule 53.11(2), is allowed a deduction for 50 percent of the first 12 months of wages paid or accrued during the tax years for work done in Iowa for employees first hired on or after January 1, 1984.

A handicapped individual domiciled in this state at the time of hiring.

An individual domiciled in this state at the time of hiring who meets any of the following conditions:

1. Has been convicted of a felony in this or any other state or the District of Columbia.
2. Is on parole pursuant to Iowa Code chapter 906.
3. Is on probation pursuant to Iowa Code chapter 907 for an offense other than a simple misdemeanor.
4. Is in a work release program pursuant to Iowa Code chapter 904.

An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under Iowa Code chapter 913 applies.

For tax years beginning on or after January 1, 1989, a taxpayer which is considered to be a small business corporation, as defined by subrule 53.11(2) is allowed a deduction for 65 percent not to exceed $20,000 of the first 12 months of wages paid or accrued during the tax year for work done in Iowa for employees first hired after January 1, 1989, who meet the above criteria.

53.11(1) The additional deduction shall not be allowed for wages paid to an individual who was hired to replace an individual whose employment was terminated within the 12-month period preceding the date of first employment. However, if the individual being replaced left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct in connection with the individual's employment as determined by the Iowa division of job service of the department of employment services, the additional deduction shall be allowed.

The determination of whether an individual left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct is a factual determination which must be made on a case-by-case basis.

53.11(2) The term "small business corporation" includes the operation of a farm but does not include the practice of a profession. The following conditions apply for the purpose of determining what constitutes a small business corporation.

a. A small business corporation shall not have had more than 20 full-time equivalent positions during each of the 26 consecutive weeks within the 52-week period immediately preceding the date on which the individual for whom an additional deduction for wages is taken was hired. Full-time equivalent position means any of the following:

1. An employment position requiring an average work week of 40 or more hours;

2. An employment position for which compensation is paid on a salaried full-time basis without regard to hours worked; or

3. An aggregation of any number of part-time positions which equal one full-time position. For purposes of this subrule each part-time position shall be categorized with regard to the average number of hours worked each week as a one-quarter, half, three-quarter, or full-time position, as set forth in the following table:

Average Number of Weekly Hours	Category
More than 0 but less than 15	¼
15 or more but less than 25	½
25 or more but less than 35	¾
35 or more	1 (full-time)

b. A small business corporation shall not have more than $1 million in annual gross revenues or after July 1, 1984, $3 million in annual gross revenues or as the average of the three preceding tax years. "Annual gross revenues" means total sales, before deducting returns and allowances but after deducting corrections and trade discounts, sales taxes and excise taxes based on sales, as determined in accordance with generally accepted accounting principles.

c. A small business corporation shall not be an affiliate or subsidiary of a business which is dominant in its field of operation. "Dominant in its field of operation" means having more than 20 full-time equivalent employees and more than $1 million of annual gross revenues or after July 1, 1984, $3 million of annual gross revenues or as the average of the three preceding tax years. "Affiliate or subsidiary of a business dominant in its field of operations" means a business which is at least 20 percent owned by a business dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalent, of a business dominant in that field of operation.

d. "Operation of a farm" means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing or the production of livestock. Operation of a farm shall not include the production of timber, forest products, nursery products, or sod and operation of a farm shall not include

a contract where a processor or distributor of farm products or supplies provides spraying, harvesting or other farm services.

e. "The practice of a profession" means a vocation requiring specialized knowledge and preparation including but not limited to the following: medicine and surgery, podiatry, osteopathy, osteopathic medicine and surgery, psychology, psychiatry, chiropractic, nursing, dentistry, dental hygiene, optometry, speech pathology, audiology, pharmacy, physical therapy, occupational therapy, mortuary science, law, architecture, engineering and surveying, and accounting.

53.11(3) Definitions.

a. The term *"handicapped person"* means any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment.

The term handicapped does not include any person who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the person from performing the duties of employment or whose employment, by reason of current use of alcohol or drugs, would constitute a direct threat to the property or the safety of others.

b. The term *"physical or mental impairment"* means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

c. The term *"major life activities"* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

d. The term *"has a record of such impairment"* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

e. The term *"is regarded as having such an impairment"* means:

1. Has a physical or mental impairment that does not substantially limit major life activities but that is perceived as constituting such a limitation;

2. Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

3. Has none of the impairments defined as physical or mental impairments, but is perceived as having such an impairment.

f. The term *"successfully completing a probationary period"* includes those instances where the employee quits without good cause attributable to the employer during the probationary period or was discharged for misconduct during the probationary period.

g. The term *"probationary period"* means the period of probation for newly hired employees, if the employer has a written probationary policy. If the employer has no written probationary policy for newly hired employees, the probationary period shall be considered to be six months from the date of hire.

53.11(4) If a newly hired employee has been certified as either a vocational rehabilitation referral or an economically disadvantaged ex-convict for purposes of qualification for the work opportunity tax credit under Section 51 of the Internal Revenue Code, that employee shall be considered to have met the qualifications for the additional wage deduction.

A vocational rehabilitation referral is any individual certified by a state employment agency as having a physical or mental disability which, for the individual, constitutes or results in a substantial handicap to employment. In addition, the individual must have been referred to the employer after completion or while receiving rehabilitation services pursuant to either a state or federal approved vocational rehabilitation program.

For all other newly hired employees, the employer has the burden of proof to show that the employees meet the qualifications for the additional wage deduction.

53.11(5) The taxpayer shall include a schedule with the filing of its tax return showing the name, address, social security number, date of hiring and wages paid of each employee for which the taxpayer claims the additional deduction for wages.

53.11(6) If the employee for which an additional deduction for wages was allowed fails to successfully complete a probationary period and the taxpayer has already filed an Iowa corporation income tax return taking the additional deduction for wages, the taxpayer shall file an amended return adding back the additional deduction for wages. The amended return shall state the name and social security number of the employee who failed to successfully complete a probationary period.

53.11(7) For tax years ending after July 1, 1990, a taxpayer who did not qualify for the additional deduction for wages paid or accrued for work done in Iowa by certain individuals set forth above is allowed an additional deduction of 65 percent not to exceed $20,000 of the first 12 months of wages paid or accrued for work done in Iowa for employees first hired on or after July 1, 1990, if the new employee is:

a. An individual domiciled in this state at the time of the hiring who meets any of the following conditions:

(1) Has been convicted of a felony in this or any other state or the District of Columbia.

(2) Is on parole pursuant to Iowa Code chapter 906.

(3) Is on probation pursuant to Iowa Code chapter 907, for an offense other than a simple misdemeanor.

(4) Is in a work release program pursuant to Iowa Code chapter 904, division IX.

b. An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under Iowa Code section 907A.1 applies.

The additional deduction is not allowed for wages paid to an individual who was hired to replace an individual whose employment was terminated within the 12-month period preceding the date of first employment. However, if the individual being replaced left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct in connection with the individual's employment as determined by the Iowa division of job service of the department of employment services, the additional deduction is allowed.

The determination of whether an individual left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct is a factual determination which must be made on a case-by-case basis.

The taxpayer must include a schedule with the filing of its tax return showing the name, address, social security number, date of hiring, and wages paid of each employee for whom the taxpayer claims the additional deduction for wages.

If the employee for whom an additional deduction for wages was allowed fails to successfully complete a probationary period and the taxpayer has already filed an Iowa corporation income tax return taking the additional deduction for wages, the taxpayer must file an amended return adding back the additional deduction for wages. The amended return must state the name and social security number of the employee who failed to successfully complete a probationary period.

53.11(8) The additional deduction applies to any individual hired on or after July 1, 2001, whether or not domiciled in Iowa at the time of hiring, who is on parole or probation and to whom either the interstate probation and parole compact under Iowa Code section 907A.1 or the compact for adult offenders under Iowa Code chapter 907B applies. The amount of additional deduction for hiring this individual is equal to 65 percent of the wages paid, but the additional deduction is not to exceed $20,000 for the first 12 months of wages paid for work done in Iowa. The conditions set out in the unnumbered paragraphs under paragraph *"b"* of subrule 53.11(7) also apply to the deduction for the hiring of certain individuals in this subrule.

This rule is intended to implement Iowa Code sections 16.1 and 422.35 as amended by 2001 Iowa Acts, House Files 287 and 759.

701—53.12(422) Federal income tax deduction. "Federal income taxes" shall mean those income taxes paid or payable to the United States Government and shall not include taxes paid or payable or taxes deemed to have been paid to a foreign country. *Construction Products, Inc. v. Briggs, State Board of Tax Review,* Case No. 25, February 1, 1972. "Federal income taxes" includes the federal alternative minimum tax. For tax years beginning on or after January 1, 1990, and before January 1, 1996, "federal income taxes" includes the federal environmental tax. Because the federal environmental tax is deducted in computing federal taxable income and Iowa Code subsection 422.35(4) only allows a deduction for 50 percent of the federal income tax paid or accrued, the federal environmental tax deducted in computing federal taxable income must be added to federal taxable income.

53.12(1) *Cash basis taxpayer.*

a. When a taxpayer is reporting on the cash basis, 50 percent of the amount of federal income taxes actually paid during the taxable period is allowable as a deduction, whether or not such taxes represent the preceding year's tax or additional taxes for prior years. Fifty percent of a federal tax refund shall be reported as income in the year received.

b. A corporation reporting on the cash basis may deduct 50 percent of the federal income tax on the accrual basis if an election is made upon filing the first return. If the corporation claims an accrual deduction on the first return, it shall be considered as an election. Once the election is made, the corporation may change the basis of federal income tax deduction only with the permission of the director. If a change in accounting method is approved or required by the Internal Revenue Service, the director is deemed to have approved the change in the basis of the federal tax deduction.

c. The federal income tax deduction during the transitional period following a change in accounting method from cash to accrual is the accrual deduction in the year of change, plus any cash payment of federal income tax paid in the year of the change for the tax year prior to the change in accounting method, reduced by a refund of federal income tax paid for the tax year prior to the year of the change in accounting method received in the year of the change. For the year of change and years subsequent to the year of the change, the deduction shall be the accrual deduction plus any federal income tax paid for a tax year prior to the year of change as a result of an amended federal return or federal audit, reduced by any refund of federal income tax paid for a tax year prior to the year of the change in accounting method.

d. The federal income tax deduction during the transitional period following a change in accounting method from accrual to cash is the cash deduction in the year of change, plus any cash payment of federal estimated income tax paid in the year prior to the year of the change for the year of the change. Any refund of federal income tax from a tax year prior to the year of the change received in the year of the change or in a subsequent year is properly accrued to the prior tax year. Any payment of federal income tax due to an amended return or federal audit for a tax year prior to the year of the change made in the year of the change or a subsequent year is accrued to that prior tax year. (For information on amended returns, see 701—subrule 52.3(4).)

53.12(2) *Accrual basis taxpayer.*

a. The amount of federal income tax to be allowed as a deduction for an accrual basis taxpayer is limited to 50 percent of the actual federal income tax liability for that year.

b. Additional federal income taxes and refunds of federal income taxes (except for 53.12(2)*"c"*) shall be a part of the tax liability accrued for such prior years.

c. Refunds resulting from net operating loss carrybacks, investment credit carrybacks, unused excess profits tax credits, and similar items shall be included in income for Iowa corporation income tax purposes in the year in which such refunds are legally accrued.

53.12(3) Rescinded, effective February 2, 1977.

53.12(4) *Consolidated federal income tax allocation.*

a. When a corporation joins with at least one other corporation in the filing of a consolidated federal income tax return, the allowable deduction shall be 50 percent of the consolidated federal income tax liability allocable to that corporation. The allocation of the consolidated federal income tax shall be determined as follows: The net consolidated federal income tax liability is multiplied by a fraction, the numerator of which is the taxpayer's federal taxable income as computed on a separate basis, and the

denominator of which is the total federal taxable incomes of each corporation included in the consolidated return. If the computation of the taxable income of a member results in an excess of deductions over gross income such member's taxable income shall be zero. *Sibley State Bank v. Bair, State Board of Tax Review,* Docket No. 182, May 26, 1978. *Internorth, Inc., and Northern Propane Gas Company v. Iowa State Board of Tax Review, Iowa Department of Revenue and GeraId D. Bair, Director of Revenue,* 333 N.W.2d 471 (Iowa 1983).

b. If a corporation joins with at least one other corporation in the filing of a consolidated federal income tax return, the federal income tax deduction allowed the Iowa taxpayer shall not exceed 50 percent of the consolidated federal income tax liability.

This rule is intended to implement Iowa Code section 422.35.

701—53.13(422) Iowa income taxes and Iowa tax refund. Iowa corporation income taxes paid or accrued during the tax year as may be applicable under the method of filing are permissible deductions for federal corporation income tax purposes, but are not permissible deductions for purposes of determining Iowa net taxable income. To the extent taxes were deducted in the determination of federal taxable income, they shall be added to federal taxable income for Iowa corporation income tax purposes. Refunds of Iowa income tax to the extent that the refunds were included in the determination of federal taxable income shall be subtracted from federal taxable income, only to the extent that a deduction for Iowa income taxes was disallowed on a prior Iowa return. Iowa income tax refunds resulting from Iowa refundable tax credits are not allowed as a deduction for Iowa corporation income tax purposes.

EXAMPLE: Corporation A reports income on a cash basis and made Iowa estimated payments of $2,000 during the 2003 tax year. The $2,000 of estimated payments was claimed as a deduction for federal income tax purposes, but was not allowed as a deduction for Iowa tax purposes. The 2003 Iowa return reported a tax liability of $1,600. Corporation A had $2,000 of Iowa estimated payments and a $500 ethanol blended gasoline tax credit, and received a $900 Iowa tax refund in 2004. Of the $900 refund reported as income on the federal return, Corporation A will be allowed a $400 ($2,000 -$1,600) reduction on the Iowa return for 2004.

This rule is intended to implement Iowa Code section 422.35.

701—53.14(422) Method of accounting, accounting period. The return shall be computed on the same basis and for the same accounting period as the taxpayer's return for federal corporation income tax purposes. Permission to change accounting methods or accounting periods for corporation tax purposes is not required provided the taxpayer furnishes the department with a copy of the federal consent.

This rule is intended to implement Iowa Code section 422.35.

701—53.15(422) Consolidated returns.

53.15(1) *Definition.* The term "common parent" as used in these rules shall have the same general meaning as when used in the federal income tax regulation. However, where the common parent is not subject to the Iowa income tax because of the provisions of 701—subrule 52.1(1) or because of specific exemption under Iowa Code section 422.34, the common parent shall designate as the agent for the affiliated group, one of its subsidiaries subject to the Iowa income tax and shall notify the director of the same in writing. Where the common parent has designated one of its subsidiaries to act as agent for the affiliated group, reference in this rule to "common parent" shall mean the designated agent.

Unless otherwise distinctly expressed, the terms used in this rule shall have the same meaning as when used in a comparable context in the federal income tax regulations for consolidated returns except for determining whether an affiliated group had exercised its privilege of filing a consolidated return. All references to the "commissioner" or "district director" in the federal regulations shall be construed to mean the director for purposes of the Iowa rules.

a. An affiliated group of corporations which did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year. Each corporation which is subject to the Iowa corporation income tax or is unitary with a member which is subject to the Iowa corporation income tax and has been a member during any part of the taxable year

for which the consolidated return is to be filed must consent (as provided in paragraph 53.15(1)*"d"*) to the filing of the consolidated return. For tax years beginning on or after July 1, 1992, only those members of the affiliated group of corporations which are subject to the Iowa corporation income tax may be included in the Iowa consolidated return. If the statutory change in the members of an affiliated group of corporations which may be included in an Iowa consolidated income tax causes a change in the members of the affiliated group actually included in the Iowa consolidated income tax return for the previous tax year, the taxpayer may discontinue filing a consolidated Iowa corporation income tax return for the first tax year beginning on or after July 1, 1992.

b. If a group wishes to exercise its privilege of filing a consolidated return, the consolidated return must be filed not later than the date prescribed by Iowa Code section 422.21 (including extensions of time) for the filing of the common parent's return. The consolidated return may not be withdrawn after the last day for filing (including extensions of time) but the group may change the basis of its return at any time prior to the last day.

c. The consolidated return shall be made on Form IA-1120 for the group by the common parent corporation. The common parent corporation of the group must attach a copy of the federal Form 851 (Affiliations Schedule) to the consolidated return.

d. If a group wishes to exercise its privilege of filing a consolidated return, each subsidiary must consent to the filing of the consolidated return for the year. The subsidiaries must consent to the filing of an Iowa consolidated return by joining in the filing of an Iowa consolidated return on or before the due date (including any extensions of time). If both separate and consolidated returns are filed on or before the due date (including any extensions of time), the latest returns filed will be considered as the taxpayers' election in regards to the filing of separate or consolidated returns.

e. The common parent, for all purposes other than the making of the consent required by subrule 53.15(1)*"a,"* shall be the sole agent for each subsidiary in the group, duly authorized to act in its own name in all matters relating to the tax liability for the consolidated return year. No subsidiary shall have authority to act for or to represent itself in any matter. The provisions of this paragraph shall apply whether or not a consolidated return is made for any subsequent year and whether or not one or more subsidiaries have become or have ceased to be members of the group at any time. If a subsidiary has ceased to be a member of the group and if the subsidiary files written notice of the cessation with the director, then upon request of the subsidiary, the director will furnish it with a copy of any notice of deficiency in respect of the tax for a consolidated return year for which it was a member. The filing of the written notification and request by a corporation shall not have the effect of limiting the scope of the agency of the common parent.

f. Unless the director agrees to the contrary, an agreement entered into by the common parent extending the time within which a notice of deficiency may be issued, or a levy or a proceeding in court begun in respect of the tax for a consolidated return year shall be applicable to each corporation which was a member of the group during any part of the taxable year and to each corporation, the income of which was included in the consolidated return for the taxable year, notwithstanding that the liability of the corporation is subsequently computed on the basis of a separate return under these rules.

g. If the common parent corporation contemplates dissolution, or is about to be dissolved, or if for any other reason its existence is about to terminate, it shall forthwith notify the director of that fact and designate another member to act as its agent in its place to the same extent and subject to the same conditions and limitations as are applicable to the common parent. If this notice is not given by the common parent, the remaining members may, subject to the approval of the director, designate another member to act as agent, and notice of the designation shall be given to the director. Until a notice in writing designating a new agent has been approved by the director, any notice of deficiency or other communications mailed to the common parent shall be considered as having been properly mailed to the agent of the group. If the director has reasons to believe that the existence of the common parent has terminated, the director may, if deemed advisable, deal directly with any member in respect of its liability.

53.15(2) *When director may require consolidated return.* In accordance with the provisions of rule 53.15(422), the director may require a consolidated return for those members of an affiliated group of

corporations which would be eligible to elect to consolidate their incomes under Iowa Code section 422.37 if the filing of separate returns for such corporations would improperly reflect the taxable incomes of said corporations or of said group.

53.15(3) *Discontinuance of filing consolidated returns.*

a. An affiliated group which filed (or was required to file) a consolidated return for the immediately preceding taxable year is required to file a consolidated return for the taxable year unless it is allowed to discontinue filing consolidated returns, or unless a federal consolidated return is not filed by the group.

b. In the event that a consolidated filing for Iowa tax purposes is discontinued for any reason, the common parent shall so notify the department by letter. The mere filing of separate returns does not, in itself, constitute sufficient notice.

c. The following constitute factors for determining when consolidated filing for Iowa tax purposes can be discontinued:

1. If the filing of separate returns will more clearly disclose the taxable income of each member of the affiliated group. Corporations should note that such determination is vested in the director. Therefore, corporations should make application to the director within a reasonable time prior to the due date of the return (including extensions of time). Normally, this would be not later than 90 days prior to said due date. The application should set forth in detail the taxable income on both a consolidated and separate basis together with the reasons why separate returns would more clearly disclose Iowa taxable income. The mere fact that the consolidated tax liability is greater or less than the combined separate liabilities is not, of itself, a ground for discontinuance of consolidated filing.

2. If one or more of the members of the affiliated group cease to be subject to Iowa corporate income tax or cease to have operations which constitute a part of the unitary business of one or more members subject to the Iowa tax, consolidation may be discontinued in whole or in part.

3. If one or more of the members of the affiliated group change in character so that they are no longer taxable under the Iowa corporate income tax law.

EXAMPLE: Common parent A is a manufacturer. Subsidiary B is a company engaged in small loans. A and B file consolidated Iowa returns. In a subsequent taxable year, B changes its business by surrendering its small loan company license and obtains a state bank charter. Even though A and B continue to file federal consolidated returns, B is now a corporation exempt from tax under Iowa Code section 422.34. Therefore A and B should discontinue filing Iowa consolidated returns.

4. If the affiliated group is purchased by another corporation or affiliated group so that after the purchase the stockholders own less than 50 percent of the fair market value of all classes of outstanding stock of the new corporation or affiliated group then the old group must discontinue filing Iowa consolidated returns. The new group may exercise its privilege of filing a consolidated return.

d. If a group is allowed to discontinue filing consolidated returns for any taxable year, then each member of the affiliated group subject to Iowa tax must file a separate return for such year on or before the last day prescribed by law (including extensions of time) for the filing of the consolidated return for such year.

e. A group shall be considered as remaining in existence, for the purposes of the Code, in accordance with the rules prescribed in Treasury Regulation Section 1.1502-75(d).

f. If a consolidated return erroneously includes the income of one or more corporations which were not members of the group at any time during the consolidated return year, the tax liability of such corporations will be determined upon the basis of separate returns (or a consolidated return of another group, if paragraph 53.15(1)*"c"* or 53.15(3)*"a"* applies) and the consolidated return will be considered as including only the income of the corporations which were members of the group during that taxable year.

g. In any case in which amounts have been assessed and paid upon the basis of a consolidated return, and where the tax liability of one or more of the corporations included in the consolidated return is to be computed in the manner described in paragraph 53.15(3)*"f,"* the amounts so paid shall be allocated between the group composed of the corporations properly included in the consolidated return and each of the corporations, whose tax liability is to be computed on a separate basis (or on the basis of a consolidated return of another group) in such manner as the corporations which were included in the

consolidated return, and where the tax liability of one or more of the corporations included absence of an agreement, the tax liability of the group shall be allocated under subrule 53.12(4).

h. The taxable year of members of the group, including rules for changing the parent's taxable year, income to be included in the separate returns, and the time for making separate returns for periods not included in a consolidated return for the purposes of the Iowa Code, shall be in accordance with the rules prescribed in Treasury Regulation Section 1.1502-76(a)-(c).

53.15(4) *Determination of consolidated Iowa income.*

a. Unless otherwise provided by these rules or manifestly inconsistent with the provisions of the Iowa Code, the consolidated taxable income for a consolidated return year under the Iowa Code shall be determined in the same manner and under the same procedures, including intercompany adjustments and eliminations, as are required by the federal income tax regulations in the case of a federal consolidated return.

b. If the Iowa affiliated group differs in its members from the federal affiliated group, such nonqualifying member(s) shall not be considered includable corporations and all computations hereunder shall be made as if such member(s) were not members of the affiliated group. The consolidated federal income tax liability shall be allocated between includable corporations and nonincludable corporations by subrule 53.12(4).

c. The apportionment provisions of Iowa Code section 422.33 shall be taken into account by an affiliated group doing business within and without Iowa. All members of an affiliated group which join in the filing of an Iowa consolidated return shall determine the portion of the consolidated net income earned within and without Iowa by the same method. All intercompany transactions shall be eliminated in the determination of the apportionment factors.

The gross receipts of each corporation which joins in the filing of an Iowa consolidated corporation income tax return shall be included in the computation of the business activity ratio. The gross receipts of each corporation shall be included in the numerator of the business activity ratio to the extent that it has nexus in Iowa and its gross receipts are not eliminated by intercompany adjustments and are considered Iowa gross receipts by rules 701—54.2(422) to 54.8(422). The gross receipts of each corporation shall be included in the denominator of the business activity ratio to the extent its gross receipts are not eliminated by intercompany adjustments.

53.15(5) *Schedules.* Supporting schedules shall be filed with the consolidated return. The statement of gross income and deductions and other schedules required for each corporation shall be prepared and filed in columnar form so that the details of the items of gross income, deductions, and credits for each member may be readily ascertained. A column shall also be provided giving effect to any eliminations and adjustments. The items included in the column for eliminations and adjustments should be symbolized to identify contra items affected, and suitable explanations appended, if necessary. Similar schedules shall contain in columnar form a reconciliation of retained earnings for each corporation, together with a reconciliation of consolidated retained earnings. Consolidated balance sheets at the beginning and close of the taxable year of the group shall accompany the consolidated return prepared in a form similar to that required for other schedules. Transactions with a subsidiary which is not included as part of the Iowa consolidated return shall not be considered as intercompany transactions for elimination purposes in computing the consolidated Iowa taxable income for the return period.

53.15(6) *Liability for tax.*

a. Except as provided in paragraph 53.15(6)*"b,"* the common parent corporation and each subsidiary subject to the Iowa corporation income tax which was a member of the affiliated group during any part of the consolidated return year shall be severally liable for the tax for the year computed in accordance with Iowa Code chapter 422, on or before the due date (not including extensions of time) for the filing of the consolidated return for that year.

b. If a subsidiary has ceased to be a member of the group and if the cessation resulted from a bona fide sale or exchange of its stock for fair value and occurred prior to the date upon which any deficiency is assessed, the director may make an assessment and collection of the deficiency from the former subsidiary in an amount not exceeding the portion of the deficiency which the director may determine to be allocable to it. If the director makes assessment and collection of any part of a deficiency

from the former subsidiary, then for purposes of any credit or refund of the amount collected from the former subsidiary the agency of the common parent under the provisions of paragraph 53.15(1)*"e"* shall not apply.

c. No agreement entered into by one or more members of the affiliated group with any other member of the group shall in any case have the effect of reducing the liability prescribed under this subrule.

53.15(7) *Computation of contribution.* Computation of a separate corporation's contribution to consolidated income or net operating loss subject to Iowa tax for purposes of net operating loss carryover and carryback limitations shall be as follows:

$$\frac{A}{B} \times C \times \frac{D}{A} + E = \text{separate corporation contribution to consolidated income subject to Iowa tax.}$$

A = Separate corporation gross sales within and without Iowa after elimination of all intercompany transactions.

B = Consolidated gross sales within and without Iowa after elimination of all intercompany transactions.

C = Iowa consolidated net income subject to apportionment.

D = Separate corporation gross sales within Iowa after elimination of all intercompany transactions.

E = Separate corporation income allocable to Iowa.

53.15(8) *Limitations on net operating loss carryover and carryback.*

a. Definitions.

(1) The term "separate return year" means a year in which a corporation filed a separate return and also a year for which it joined (or was required to join) in the filing of an Iowa consolidated return by another affiliated group.

(2) The term "separate return limitation year" means any separate return year of a member of the group or of a predecessor of the member.

b. Limitation on net operating loss carryover. A net operating loss from a separate return limitation year of a member of the group may be carried over only to the extent that the member contributed to the Iowa consolidated taxable income as computed under subrule 53.15(7). A net operating loss carryover from a separate return limitation year cannot create or increase a consolidated net operating loss which is carried back.

A consolidated net operating loss may be carried over to a consolidated return year without limitation even though in the carryover year the affiliated group contains members which were not members of the group in the loss year.

If a member of the affiliated group in the loss year leaves the group through the sale of its stock or because it is now a corporation exempt from tax under Iowa Code section 422.34, its share, as determined by subrule 53.15(7), of the unabsorbed consolidated net operating loss at the end of the consolidated return year during which the member left the group or became exempt from tax may not be carried forward to a subsequent consolidated return.

c. Limitation on net operating loss carryback. A member's share of an Iowa consolidated net operating loss as computed under subrule 53.15(7) must be carried back to a separate return year, unless the affiliated group elected to carry the net operating loss forward. However, if the member was not in existence in the carryback year but had been a member of the group for every tax year of its existence, its share of the Iowa consolidated loss may be carried back to a separate return year of the common parent.

If a consolidated net operating loss is carried back to a consolidated return year and all members of the affiliated group are the same in the carryback year as in the loss year, the consolidated net operating loss may be carried back without limitation. If there are members of the affiliated group in the loss year which were not members in the carryback year, then the formula in subrule 53.15(7) must be used to determine the portion of the consolidated net operating loss attributable to the members in existence in the carryback year and which may be carried back. Any member of the affiliated group which was a member of the loss-year affiliated group which has been a member of the group since its formation

will be regarded as having been a member of the group in the carryback year even though it was not then in existence. A merger or liquidation of members within the affiliated group will be disregarded in determining whether there has been a change in the group between the loss year and the carryback year.

The amount of net operating loss that may be carried back from a separate return year to a consolidated return year is limited to the extent that the former member contributed to the Iowa consolidated taxable income as computed under subrule 53.15(7).

This rule is intended to implement Iowa Code sections 422.35 and 422.37 as amended by 1992 Iowa Acts, Second Extraordinary Session, Senate File 2393.

701—53.16(422) Federal rulings and regulations. In determining whether "taxable income," "net operating loss deduction" or any other deductions are computed for federal tax purposes under, or have the same meaning as provided by, the Internal Revenue Code, the department will use applicable rulings and regulations that have been duly promulgated by the Commissioner of Internal Revenue, unless the director has created rules and regulations or has exercised discretionary powers as prescribed by statute which call for an alternative method for determining "taxable income," "net operating loss deduction," or any other deductions, or unless the department finds that an applicable Internal Revenue ruling or regulation is unauthorized according to the Iowa Code.

This rule is intended to implement Iowa Code section 422.35.

701—53.17(422) Depreciation of speculative shell buildings.

53.17(1) For tax years beginning on or after July 1, 1992, speculative shell buildings constructed or reconstructed after that date may be depreciated as 15-year property under the accelerated cost recovery system of the Internal Revenue Code. If the taxpayer has deducted depreciation on the speculative shell building on the taxpayer's federal income tax return, that amount of depreciation must be added to the federal taxable income in order to deduct depreciation under this rule.

53.17(2) On sale or other disposition of the speculative shell building, the taxpayer must report on the taxpayer's Iowa corporation income tax return the same gain or loss reported on the taxpayer's federal corporation income tax return. If, while owned by the taxpayer, the building is converted from a speculative shell building to another use, the taxpayer must deduct the same amount of depreciation on the taxpayer's Iowa tax return as is deducted on the taxpayer's federal tax return.

53.17(3) For the purposes of this rule, the term "speculative shell building" means a building as defined in Iowa Code section 427.1, subsection (27)*"c."*

This rule is intended to implement Iowa Code section 422.35.

701—53.18(422) Deduction of multipurpose vehicle registration fee. For tax years beginning on or after January 1, 1992, and before January 1, 2005, corporations may claim a deduction for 60 percent of the amount of the registration fee paid for a multipurpose vehicle under Iowa Code section 321.124, subsection 3, paragraph *"h."* In order to qualify for this deduction, no part of the multipurpose vehicle registration fee may have been deducted as an ordinary and necessary business expense.

For tax years beginning on or after January 1, 2005, the deduction for Iowa corporation income tax for multipurpose vehicle registration fees is the same as allowed under Section 164 of the Internal Revenue Code for federal tax purposes.

This rule is intended to implement Iowa Code section 422.35.

701—53.19(422) Deduction of foreign dividends. For tax years beginning on or after January 1, 1992, corporations may claim a deduction based on percentage of ownership as set forth in Section 243 of the Internal Revenue Code for foreign dividends including Subpart F income as defined in Section 952 of the Internal Revenue Code. See *Kraft General Foods, Inc. v. Iowa Department of Revenue and Finance*, 505 U.S. 71, 120 L.Ed 59, 112 S.Ct. 2365 (1992).

This rule is intended to implement Iowa Code section 422.35.

701—53.20(422) Employer social security credit for tips. Employers in the food and beverage industry are allowed a credit under Section 45B of the Internal Revenue Code for a portion of the social

security taxes paid or incurred after 1993 on employee tips. The credit is equal to the employer's FICA obligation attributable to tips received which exceed tips treated as wages for purposes of satisfying minimum wage standards of the Fair Labor Standards Act. The credit is allowed only for tips received by an employee in the course of employment from customers on the premises of a business for which the tipping of employees serving food or beverages is customary. To the extent that an employer takes the credit for a portion of the social security taxes paid or incurred, the employer's deduction for the social security tax is reduced accordingly. For Iowa income tax purposes, the full deduction for the social security tax paid or incurred is allowed for tax years beginning on or after January 1, 1994. No social security tax credit is allowed on the Iowa corporation income tax return.

This rule is intended to implement Iowa Code section 422.35 as amended by 1995 Iowa Acts, chapter 152.

701—53.21(422) Deduction for contributions made to the endowment fund of the Iowa educational savings plan trust. To the extent that the contribution was not deductible for federal income tax purposes, any gift, grant, or donation to the endowment fund of the Iowa educational savings plan trust may be deducted for Iowa income tax purposes. The contribution must be made on or after July 1, 1998, but before April 15, 2004. Effective April 15, 2004, the deduction for contributions made to the endowment fund is repealed.

This rule is intended to implement Iowa Code section 422.35 as amended by 1998 Iowa Acts, House File 2119.

701—53.22(422) Additional first-year depreciation allowance.

53.22(1) *Assets acquired after September 10, 2001, but before May 6, 2003.* For tax periods ending after September 10, 2001, but beginning before May 6, 2003, the additional first-year depreciation allowance ("bonus depreciation") of 30 percent authorized in Section 168(k) of the Internal Revenue Code, as enacted by Public Law No. 107-147, Section 101, does not apply for Iowa corporation income tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on assets acquired after September 10, 2001, but before May 6, 2003, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after September 10, 2001, but before May 6, 2003, can be calculated on Form IA 4562A.

The following nonexclusive examples illustrate how this subrule applies:

EXAMPLE 1: Taxpayer acquired a $100,000 qualifying asset on January 1, 2002, which has a five-year life for depreciation purposes. Using the bonus depreciation provision in Section 168(k) of the Internal Revenue Code, taxpayer was entitled to a $44,000 depreciation deduction on the federal return for 2002. For Iowa purposes, taxpayer must use the MACRS depreciation method which results in a $20,000 depreciation deduction on the Iowa return for 2002. Therefore, a $24,000 ($44,000 -$20,000) increase to net income relating to this depreciation adjustment must be made on the Iowa return for 2002.

EXAMPLE 2: Taxpayer acquired a $1,000,000 qualifying asset on January 1, 2002, which has a ten-year life for depreciation purposes. This asset was sold on December 31, 2005, for $500,000. Using the bonus depreciation provision, taxpayer claimed $677,440 of depreciation deductions on the federal returns for 2002-2005. This results in a basis for this asset of $322,560 ($1,000,000 - $677,440), and a gain of $177,440 ($500,000 - $322,560) on the federal return for 2005 on the sale of the asset.

Using the MACRS depreciation method, taxpayer claimed $539,200 of depreciation deductions on the Iowa returns for 2002-2005. This results in a basis for this asset of $460,800 ($1,000,000 -$539,200), and a gain of $39,200 ($500,000 - $460,800) on the Iowa return for 2005 on the sale of the asset.

Therefore, a decrease to net income of $138,240 ($177,440 - $39,200) relating to this gain adjustment must be made on the Iowa return for 2005.

53.22(2) *Assets acquired after May 5, 2003, but before January 1, 2005.* For tax periods beginning after May 5, 2003, but beginning before January 1, 2005, the bonus depreciation of 50 percent authorized in Section 168(k) of the Internal Revenue Code, as amended by Public Law No. 108-27, Section 201, may be taken for Iowa corporation income tax. If the taxpayer elects to take the 50 percent bonus depreciation, the depreciation deduction allowed on the Iowa corporation income tax return is the same as the depreciation deduction allowed on the federal income tax return for assets acquired after May 5, 2003, but before January 1, 2005.

a. If the taxpayer elects to take the 50 percent bonus depreciation and had filed an Iowa return prior to February 24, 2005, which reflected the disallowance of 50 percent bonus depreciation, the taxpayer may choose between two options to reflect this change. Taxpayer may either file an amended return for the applicable tax year to reflect the 50 percent bonus depreciation provision, or taxpayer may reflect the change for 50 percent bonus depreciation on the next Iowa return filed subsequent to February 23, 2005. Taxpayer must choose only one of these two options. Regardless of the option chosen, taxpayer must complete and attach a revised Form IA 4562A to either the amended return or the return filed subsequent to February 23, 2005.

See 701—subrule 40.60(2), paragraph *"a,"* for examples illustrating how this subrule is applied.

b. If the taxpayer elects not to take the 50 percent bonus depreciation, taxpayer must add the total amount of depreciation claimed on assets acquired after May 5, 2003, but before January 1, 2005, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k). If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets. The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after May 5, 2003, but before January 1, 2005, can be calculated on Form IA 4562A.

53.22(3) *Assets acquired after December 31, 2007, but before January 1, 2009.* For tax periods beginning after December 31, 2007, but beginning before January 1, 2009, the bonus depreciation of 50 percent authorized in Section 168(k) of the Internal Revenue Code, as amended by Public Law No. 110-185, Section 103, does not apply for Iowa corporation income tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on assets acquired after December 31, 2007, but before January 1, 2009, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after December 31, 2007, but before January 1, 2009, can be calculated on Form IA 4562A.

The following nonexclusive examples illustrate how this subrule applies:

EXAMPLE 1: Taxpayer acquired a $100,000 qualifying asset on January 10, 2008, which has a five-year life for depreciation purposes. Using the bonus depreciation provision in Section 168(k) of the Internal Revenue Code, taxpayer was entitled to a $44,000 depreciation deduction on the federal return for 2008. For Iowa purposes, taxpayer must use the MACRS depreciation method which results in a $20,000 depreciation deduction on the Iowa return for 2008. Therefore, a $24,000 ($44,000 – $20,000) increase to net income relating to this depreciation adjustment must be made on the Iowa return for 2008.

EXAMPLE 2: Taxpayer acquired a $1,000,000 qualifying asset on January 10, 2008, which has a ten-year life for depreciation purposes. This asset was sold on December 31, 2011, for $500,000. Using

the bonus depreciation provision, taxpayer claimed $677,440 of depreciation deductions on the federal returns for 2008-2011. This results in a basis for this asset of $322,560 ($1,000,000 – $677,440), and a gain of $177,440 ($500,000 – $322,560) on the federal return for 2011 on the sale of the asset.

Using the MACRS depreciation method, taxpayer claimed $539,200 of depreciation deductions on the Iowa returns for 2008-2011. This results in a basis for this asset of $460,800 ($1,000,000 – $539,200), and a gain of $39,200 ($500,000 – $460,800) on the Iowa return for 2011 on the sale of the asset. Therefore, a decrease to net income of $138,240 ($177,440 – $39,200) relating to this gain adjustment must be made on the Iowa return for 2011.

This rule is intended to implement Iowa Code section 422.35.

701—53.23(422) Section 179 expensing. For tax periods beginning on or after January 1, 2003, but beginning before January 1, 2006, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 108-27, Section 202, may be taken for Iowa corporation income tax. If the taxpayer elects to take the increased Section 179 expensing, the Section 179 expensing allowance on the Iowa corporation income tax return is the same as the Section 179 expensing allowance on the federal income tax return for tax years beginning on or after January 1, 2003, but beginning before January 1, 2006. In addition, for tax periods beginning on or after January 1, 2008, but beginning before January 1, 2009, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No.110-185, Section 102, may be taken for Iowa corporation income tax.

53.23(1) If the taxpayer elects to take the increased Section 179 expensing and had filed an Iowa return prior to February 24, 2005, which reflected the disallowance of increased Section 179 expensing, the taxpayer may choose between two options to reflect this change. Taxpayer may either file an amended return for the applicable tax year to reflect the increased Section 179 expensing, or taxpayer may reflect the change for increased Section 179 expensing on the next Iowa return filed subsequent to February 23, 2005. Taxpayer must choose only one of these two options. Regardless of the option chosen, taxpayer must complete and attach a revised Form IA 4562A to either the amended return or the return filed subsequent to February 23, 2005.

See 701—subrule 40.65(1) for examples illustrating how this subrule is applied.

53.23(2) If the taxpayer elects not to take the increased Section 179 expensing, the expensing allowance is limited to $25,000 for Iowa tax purposes. The difference between the federal Section 179 expensing allowance on such property, if in excess of $25,000, and the Iowa expensing allowance of $25,000 can be depreciated using the modified accelerated cost recovery system (MACRS) applicable under Section 168 of the Internal Revenue Code without regard to the bonus depreciation provision in Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable Section 179 and related depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both the Section 179 expensing allowance and related depreciation, along with the gain or loss on the sale of qualifying assets for tax years beginning on or after January 1, 2003, but beginning before January 1, 2006, can be calculated on Form IA 4562A.

The following nonexclusive examples illustrate how this subrule applies:

EXAMPLE 1: Taxpayer acquired a $110,000 qualifying asset on January 1, 2003, which has a five-year life for depreciation purposes. Taxpayer was entitled to a $100,000 Section 179 expensing allowance, a $5,000 bonus depreciation deduction under Section 168(k) of the Internal Revenue Code, and an additional depreciation deduction under Section 168 of the Internal Revenue Code for a total deduction of $106,000 for federal tax purposes. For Iowa purposes, taxpayer filed a return showing a $25,000 Section 179 expensing allowance and a $17,000 depreciation deduction using MACRS, for a total Iowa deduction of $42,000. Therefore, since taxpayer elected not to take the increased Section 179 expensing for Iowa tax purposes, a $64,000 ($106,000 – $42,000) adjustment to net income relating to this Section 179 and depreciation adjustment would be made on the Iowa return for 2003. Similar adjustments would

be made on the 2004 and 2005 Iowa returns if taxpayer elected not to take the increased Section 179 expensing for Iowa tax purposes.

EXAMPLE 2: Assume the same facts as given in Example 1, and the qualifying asset was sold on December 31, 2005, for $50,000. Taxpayer elected not to take the increased Section 179 expensing for Iowa tax purposes. Taxpayer would have claimed $108,560 of Section 179 and depreciation deductions on the federal returns for 2003-2005. This results in a basis for this asset of $1,440 ($110,000 – $108,560), and a gain of $48,560 ($50,000 – $1,440) on the federal return for 2005 on the sale of the asset.

Taxpayer would have claimed $85,520 of Section 179 and depreciation deductions using the Section 179 limit of $25,000 and the MACRS depreciation method on the Iowa returns for 2003-2005. This results in a basis for this asset of $24,480 ($110,000 – $85,520), and a gain of $25,520 ($50,000 – $24,480) on the Iowa return for 2005 on the sale of the assets. Therefore, an adjustment to net income of $23,040 ($48,560 – $25,520) relating to this gain adjustment would be made on the Iowa return for 2005.

This rule is intended to implement Iowa Code section 422.35 as amended by 2008 Iowa Acts, Senate File 2123.

701—53.24(422) Exclusion of ordinary or capital gain income realized as a result of involuntary conversion of property due to eminent domain. For tax years beginning on or after January 1, 2006, a taxpayer may exclude the amount of ordinary or capital gain income realized as a result of the involuntary conversion of property due to eminent domain for Iowa corporation income tax. Eminent domain refers to the authority of government agencies or instrumentalities of government to requisition or condemn private property for any public improvement, public purpose or public use. The exclusion for Iowa purposes can only be claimed in the year in which the ordinary or capital gain income was reported on the federal income tax return.

In order for an involuntary conversion to qualify for this exclusion, the sale must occur due to the requisition or condemnation, or its threat or imminence, if it takes place in the presence of, or under the threat or imminence of, legal coercion relating to a requisition or condemnation. There are numerous federal revenue rulings, court cases and other provisions relating to the definitions of the terms "threat" and "imminence," and these are equally applicable to the exclusion of ordinary or capital gains realized for tax years beginning on or after January 1, 2006.

53.24(1) *Reporting requirements.* In order to claim an exclusion of ordinary or capital gain income realized as a result of involuntary conversion of property due to eminent domain, the taxpayer must attach a statement to the Iowa corporation income tax return in the year in which the exclusion is claimed. The statement should state the date and details of the involuntary conversion, including the amount of the gain being excluded and the reasons why the gain meets the qualifications of an involuntary conversion relating to eminent domain. In addition, if the gain results from the sale of replacement property as outlined in subrule 53.24(2), information must be provided in the statement on that portion of the gain that qualified for the involuntary conversion.

53.24(2) *Claiming the exclusion when gain is not recognized for federal tax purposes.* For federal tax purposes, an ordinary or capital gain is not recognized when the converted property is replaced with property that is similar to, or related in use to, the converted property. In those cases, the basis of the old property is simply transferred to the new property, and no gain is recognized. In addition, when property is involuntarily converted into money or other unlike property, any gain is not recognized when replacement property is purchased within a specified period for federal tax purposes.

For Iowa corporation tax purposes, no exclusion will be allowed for ordinary or capital gain income when there is no gain recognized for federal tax purposes. The exclusion will only be allowed in the year in which ordinary or capital gain income is realized due to the disposition of the replacement property for federal tax purposes, and the exclusion is limited to the amount of the ordinary or capital gain income relating to the involuntary conversion. The basis of the property for Iowa corporation income tax purposes will remain the same as the basis for federal tax purposes and will not be altered because of the exclusion allowed for Iowa corporation income tax.

EXAMPLE: In 2007, taxpayer sold some farmland as a result of an involuntary conversion relating to eminent domain and realized a gain of $50,000. However, the taxpayer purchased similar farmland immediately after the sale, and no gain was recognized for federal tax purposes. Therefore, no exclusion is allowed on the 2007 Iowa corporation income tax return. In 2009, taxpayer sold the replacement farmland that was not subject to an involuntary conversion and realized a total gain of $70,000, which was reported on the 2009 federal income tax return. The taxpayer can claim a deduction of $50,000 on the 2009 Iowa corporation income tax return relating to the gain that resulted from the involuntary conversion.

This rule is intended to implement Iowa Code section 422.35.

701—53.25(422) Exclusion of income from sale, rental or furnishing of tangible personal property or services directly related to production of film, television or video projects. For tax years beginning on or after January 1, 2007, a taxpayer which is an Iowa-based business may exclude, to the extent included in federal taxable income, income received from the sale, rental or furnishing of tangible personal property or services directly related to the production of film, television, or video projects that are registered with the film office of the Iowa department of economic development.

Income which can be excluded on the Iowa return must meet the criteria of a qualified expenditure for purposes of the film qualified expenditure tax credit as set forth in rule 701—52.34(15,422). An Iowa-based business is a business whose commercial domicile as defined in Iowa Code section 422.32(3) is in Iowa.

However, if a taxpayer claims this income tax exclusion, the same taxpayer cannot also claim the film qualified expenditure tax credit as described in rule 701—52.34(15,422). In addition, any taxpayer who claims this income tax exclusion cannot have an equity interest in a business which received a film qualified expenditure tax credit. Finally, any taxpayer who claims this income tax exclusion cannot participate in the management of the business which received the film qualified expenditure tax credit.

EXAMPLE: A production company which registers with the film office for a project is a corporation which is domiciled in Iowa. If this same corporation receives income that is a qualified expenditure for purposes of the film qualified expenditure tax credit, the corporation cannot exclude this income on the Iowa corporation income tax return because the corporation has claimed the film qualified expenditure tax credit.

This rule is intended to implement Iowa Code section 422.35 as amended by 2007 Iowa Acts, House File 892, section 8.

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◊ Two or more ARCs

CHAPTER 54
ALLOCATION AND APPORTIONMENT
[Prior to 12/17/86, Revenue Department[730]]

701—54.1(422) Basis of corporate tax. Iowa Code section 422.33 imposes a tax on all corporations incorporated under the laws of Iowa and upon every foreign corporation doing business in Iowa. For tax years beginning on or after January 1, 1999, Iowa Code section 422.33 imposes a tax on all corporations doing business in Iowa. For corporations or other entities subject to the tax (as corporations), the tax is levied and collected only on such income as may accrue or be recognized to the corporation from business done or carried on in the state plus net income from certain sources without the state which by law follows the commercial domicile of the corporation.

If a corporation carries on its trade or business entirely within the state of Iowa, no allocation or apportionment of its income may be made. The corporation will be presumed to be carrying on its business entirely within the state of Iowa if its sales or other activities are carried on only in Iowa, even though it received income from sources outside the state in the form of interest, dividends, royalties and other sources of income from intangibles. For tax years beginning on or after January 1, 1995, an Iowa-domiciled corporation may apportion its income if it has income from intangibles that have acquired a business situs outside Iowa even if it has no other activities outside the state. For tax years beginning on or after January 1, 1999, an Iowa-domiciled corporation may apportion its income if the trade or business is carried on partly within and partly without the state or if income is derived from sources partly within and partly without the state, or if income is derived from trade or business and sources, all of which are not entirely in the state. (See 701—subrules 52.1(1) and 52.1(4).)

For tax years beginning on or after January 1, 1986, the income from the operation of a farm may be allocated and apportioned within and without the state if the business activities of the corporation are carried on partly within and partly without the state. For tax years beginning on or after January 1, 1995, an Iowa-domiciled corporation may apportion its income if it has income from intangibles that have acquired a business situs outside Iowa even if it has no other activities outside the state. For tax years beginning on or after January 1, 1999, an Iowa-domiciled corporation may apportion its income if the trade or business is carried on partly within and partly without the state or if income is derived from sources partly within and partly without the state, or if income is derived from trade or business and sources, all of which are not entirely in the state. (See 701—subrules 52.1(1) and 52.1(4).)

See subrule 54.1(4) for the definition of carrying on a trade or business partly within and partly without the state.

54.1(1) *Definition—operation of a farm.* A taxpayer is engaged in the operation of a farm if the taxpayer cultivates, operates, or manages a farm for gain or profit, either as owner or tenant. For the purpose of Iowa Code section 422.33(1), a taxpayer who receives a rental (either in cash or in kind) which is based upon farm production is engaged in the operation of a farm. However, a taxpayer who receives a fixed rental (without reference to production) is engaged in the operation of a farm only if the taxpayer participates to a material extent in the operation or management of the farm. A taxpayer engaged in forestry or the growing of timber is not thereby engaged in the operation of a farm. A taxpayer cultivating or operating a farm for recreation or pleasure rather than a profit is not engaged in the operation of a farm. For the purpose of this subrule, the term "farm" is used in its ordinary, accepted sense and includes stock, dairy, poultry, fruit, and truck farms, and also plantations, ranches, ranges, and orchards. A taxpayer is engaged in the operation of a farm if the taxpayer is a member of a partnership engaged in the operation of a farm. The operation of a farm includes the sale of products produced on the farm. The purchase of livestock for feeding purposes and subsequent resale is part of the operation of a farm.

54.1(2) *Definition—property used in the operation of a farm.* Property used in the operation of a farm means land and buildings which are used in the operation of a farm. The land must be used for the production of crops, fruits, or other agricultural products or for the sustenance of livestock. For the purposes of this subrule, the term livestock includes cattle, hogs, horses, mules, donkeys, sheep, goats, captive furbearing animals, chickens, turkeys, pigeons, and other poultry. It does not include fish, frogs,

reptiles, and the like. Land used for the sustenance of livestock includes land used for grazing such livestock.

Property used in the operation of a farm means property used in the unitary operations of a farm whether or not the acreage is contiguous.

54.1(3) *Definition—unitary operations of a farm.* Unitary operations of a farm means the operation of one or more tracts of land or the conducting of one or more types of farming operations where the operation of a farm within Iowa is integrated with, dependent upon or contributes to the operations of a farm outside the state.

54.1(4) *Definition—carrying on a trade or business partly within and partly without the state.* Carrying on a trade or business partly within and partly without the state means having business activities in at least one other state sufficient to meet the minimum constitutional standards for doing business in a state under the due process and commerce clauses of the United States Constitution. The determination of whether a corporation is carrying on a trade or business partly within and partly without the state must be made on a tax-year-by-tax-year basis. The activities of a past or future tax year have no bearing on the current year.

The following nonexclusive list of activities on a non-de minimus basis determined by aggregating all activities if physically carried on in a regular, systematic, and continuing basis by corporate officers or employees or representatives in at least one other state would constitute the minimum activities which would meet the constitutional standards for doing business in a state under the due process and commerce clauses of the United States Constitution:

The term "representative" means independent contractors, agents, brokers, and other individuals or entities who act on behalf of or at the direction of the corporation. A person may be considered a "representative" even though that person may not be considered an employee for other purposes such as withholding of income tax from commissions.

a. The free distribution of product samples, brochures, and catalogues which explain the use of or laud the product, or both.

b. Negotiation of a price for a product.

c. Demonstration of how the corporation's product works.

d. Delivery of goods to customers by the corporation in its own or leased vehicles.

e. Audit of inventory levels.

f. Recruitment, training, evaluation, and management of employees, officers, or representatives.

g. Intervention/mediation in credit disputes between customers and Iowa-located corporate departments.

h. Use of hotel rooms and homes for business meetings.

i. Assistance to wholesalers in obtaining suitable displays for products.

j. Furnishing of display racks at no charge.

k. Advice to sellers on the art of displaying goods to the public.

l. Rental of hotel rooms for short-term display of products.

m. Mere forwarding of customer questions, concerns, or problems.

n. Installation or assembly of the corporate product.

o. Ownership or lease of real estate by the corporation and used for a business purpose.

p. Solicitation of orders for, or sale of, services or real estate.

q. Solicitation of sales or sale of tangible personal property (as opposed to solicitation of orders).

r. Maintenance of a stock of inventory.

s. Existence of an office or other business location.

t. Managerial activities.

u. Collections on regular or delinquent accounts.

v. Technical assistance and training given to purchaser and user of corporate products.

w. The repair or replacement of faulty or damaged goods.

x. The pickup of damaged, obsolete, or returned merchandise from purchaser or user.

y. Rectification of or assistance in rectifying any product complaints or shipping complaints, for example.

z. Delivery of corporate merchandise inventory to corporation's distributors or dealers on consignment.

aa. Maintenance of personal property.

ab. Participation in recruitment, training, monitoring, or approval of servicing distributors, dealers, or others where purchasers of corporation's products can have such products serviced or repaired.

ac. Inspection or verification of faulty or damaged goods.

ad. Inspection of the customer's installation of the corporate product.

ae. Research.

af. Employees' or officers' use of part of their homes or other places as an office if the corporation pays for such use.

ag. The use of samples for replacement or sale; storage of such samples at home or in rented space.

ah. Removal of old or defective products.

ai. Verification of the destruction of damaged merchandise.

aj. Repair or warranty work on company goods or products after sale.

ak. Any other activities carried on in advancement, promotion, or fulfillment of the business of the corporation.

Some of the above activities may not create a tax liability in another state because of the protections afforded by Public Law 86-272, 15 USCA Sections 381-385, which prohibit the taxation of a corporation if its only activities in the state are the solicitation of orders which are approved and filled by shipment or delivery from outside the state. Irrespective of whether the corporation is taxable in another state, it may apportion its income if it carries on one or a combination of the above activities in a regular and continuing basis by corporate officers or employees in at least one other state.

The mere shipment of goods via common carrier or the United States Postal Service to non-Iowa destinations does not constitute doing business partly within and partly without the state. *Irvine Co. v. McColgan,* 26 Cal.2d 160, 157 P.2d 847 (1945); *W.J. Dickey & Sons, Inc. v. State Tax Commission,* 212 Md. 607, 131 A.2d 277 (1957); *State of Georgia v. Coca-Cola Bottling Co.,* 214 Ga. 316, 104 S.E.2d 574 (1958); *E.F. Johnson Company v. Commissioner of Taxation,* 224 N.W.2d 150 (Minnesota 1975); 1980 O.A.G. 588, and *Kuehn to Bair* #85-5-53(L).

For tax years beginning on or after January 1, 1989, a corporation domiciled in this state whose trade or business is carried on partly within and partly without the state or whose income is derived from sources partly within and partly without the state may allocate and apportion its income within and without the state. "Income from sources partly within and partly without the state" means income from real or tangible property located or having a situs within and without the state.

The term "tangible property having a situs without the state" means that a tangible property is habitually present in a state other than Iowa or it maintains a fixed and regular route through another state sufficient that the other state could constitutionally under the 14th Amendment and Commerce Clause of the United States Constitution impose an apportioned ad valorem tax on the property. *Central R. Co. v. Pennsylvania*, 370 U.S. 607, 82 S.Ct. 1297, 8 L.Ed.2d (1962); *New York Central & H. Railroad Co. v. Miller,* 202 U.S. 584, 26 S.Ct. 714, 50 L.Ed. 155 (1906); *American Refrigerator Transit Company v. State Tax Commission,* 395 P.2d 127 (Or. 1964); *Upper Missouri River Corporation v. Board of Review,* Woodbury County, 210 N.W.2d 828.

For tax years beginning on or after January 1, 1995, a corporation whose trade or business is carried on partly within and partly without the state of Iowa or whose income is derived from sources partly within and partly without the state may allocate and apportion its income within and without the state. "Income from sources partly within and partly without the state" means income from real, tangible, or intangible property located or having situses within and without the state.

This rule is intended to implement Iowa Code section 422.33(1) as amended by 1999 Iowa Acts, chapter 151.

701—54.2(422) Allocation or apportionment of investment income.

54.2(1) The classification of investment income by the labels customarily given them, such as interest, dividends, rents, and royalties, is of no aid in determining whether that income is business

or nonbusiness income. Interest, dividends, rents, and royalties shall be apportioned as business income to the extent the income was earned as a part of a corporation's unitary business, a portion of which is conducted in Iowa. *Mobil Oil Corp. v. Commissioner of Taxes,* 455 U.S. 425 (1980); *ASARCO, Inc. v. Idaho State Tax Commission,* 458 U.S. 307, 73 L.Ed.2d 787, 102 S.Ct. 3103 (1982); *F. W. Woolworth Co. v. Taxation and Revenue Dept.,* 458 U.S. 354, 73 L.Ed.2d 819, 102 S.Ct. 3128 (1982); *Container Corporation of America v. Franchise Tax Board,* 463 U.S. 159,77 L.Ed.2d 545, 103 S.Ct. 2933 (1983). Whether investment income is part of a corporation's unitary business income depends upon the facts and circumstances in the particular situation. The burden of proof is upon the taxpayer to show that the treatment of investment income on the return as filed is proper. There is a rebuttable presumption that an affiliated group of corporations in the same line of business have a unitary relationship, although that is not the only element used in determining unitariness.

54.2(2) All business income, including capital gains or losses, may at the taxpayer's election be included in the computation of the denominator of the business activity formula provided, however, that a taxpayer cannot elect to exclude or include business investment income where the election would result in an understatement of net income reasonably attributable to Iowa.

For a tax year which begins on or after January 1, 1984, if the taxpayer has investment income which is deemed to be business income under the provisions of this rule, a written election shall be made. The election must state whether the taxpayer wishes to include or exclude investment income which is deemed to be business income under the provisions of this rule in the computation of the business activity formula. The election shall be signed by a duly authorized officer of the corporation. The election is binding on all future tax years unless the taxpayer is granted permission by the director to change the election. If the taxpayer fails to make a written election, the fact that investment income was or was not included in the computation of the business activity formula shall be deemed to be the taxpayer's election for all future tax years.

If the taxpayer makes an election to include investment income deemed to be business income in the computation of the denominator of the business activity ratio, the computation of the business activity ratio is as follows:

a. Interest income from accounts receivable. Accounts receivable interest income is included in the numerator of the business activity formula if the taxpayer receives accounts receivable interest income from customers located in Iowa. Accounts receivable interest income which cannot be segregated by geographical source shall be included in the numerator of the business activity ratio applying the same ratio as gross receipts within Iowa bear to total gross receipts.

EXAMPLE: The taxpayer operates a multistate chain of gasoline service stations, selling for cash and on credit. Interest is charged on credit sales, but the interest income cannot be segregated by geographical source. During the tax year, the taxpayer had gross receipts within Iowa of $300,000, total gross receipts everywhere of $1,000,000, and accounts receivable interest income everywhere of $10,000. Ten thousand dollars would be included in the denominator of the business activity formula, and 30 percent of $10,000, or $3,000, would be included in the numerator of the business activity formula.

b. Interest income other than accounts receivable. All other interest income determined to be business income, except nontaxable interest income, shall be included in the numerator of the business activity formula if the taxpayer's commercial domicile is in Iowa.

c. Dividend income. All dividend income (net of special deductions) determined to be business income shall be included in the numerator of the business activity formula if the taxpayer's commercial domicile is in Iowa.

d. Rental income. All rental income determined to be business income shall be included in the numerator of the business activity formula to the extent that property is utilized in Iowa or in its entirety if the taxpayer's commercial domicile is in Iowa and the taxpayer is not taxable in the state in which the property is utilized. The extent of utilization of tangible personal property in a state is determined by multiplying the rent by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental periods in the taxable

year. If the physical location of the property during the rental period is unknown or not ascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental payer obtained possession.

e. Royalty income. All royalty income from intangible personal property determined to be business income shall be included in the numerator of the business activity formula if the taxpayer's commercial domicile is in Iowa. All royalty income from tangible personal property or real property determined to be business income shall be included in the numerator of the business activity formula if the situs of the tangible personal property or real property is within Iowa.

f. Gain or loss from the sale, exchange, or other disposition of real or tangible or intangible personal property, if the property while owned by the taxpayer was used in the taxpayer's trade or business, shall be apportioned by the business activity ratio applicable to the return for the year the gain or loss is included in taxable income and shall be included in the computation of the business activity ratio as follows:

(1) Gain or loss from the sale, exchange, or other disposition of real property shall be included in the numerator if the property is located in this state.

(2) Gain or loss from the sale, exchange, or other disposition of tangible personal property shall be included in the numerator if:

The property has a situs in this state at the time of sale; or

The taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(3) Gains or loss from the sale, exchange, or other disposition of intangible personal property shall be included in the numerator if the taxpayer's commercial domicile is in this state.

(4) All gains or loss shall be included in the denominator of the activity ratio.

Noninclusive examples of gains or loss from the sale, exchange or other disposition of real or tangible or intangible property which may not be included in the computation of the business activity ratio because to do so would result in an understatement of net income reasonably attributable to Iowa are the gain recognized under an election pursuant to Section 338 of the Internal Revenue Code or gain recognized under Section 631(a) of the Internal Revenue Code.

g. Other miscellaneous income. All other miscellaneous income determined to be business income shall be included in the computation of the business activity formula to the extent such income items do not represent a recapture of expense.

h. Income which is not subject to Iowa tax shall not be included in the computation of the business activity ratio.

Subrules 54.2(1) and 54.2(2) are effective for tax years beginning on or after January 1, 1983.

54.2(3) For tax years beginning on or after January 1, 1995, all investment income that is business income, including capital gains or losses, shall be included in the computation of the denominator of the business activity formula if the investment income is derived from intangible property that has become an integral part of some business activity occurring regularly in or outside of Iowa. See subrule 52.1(4). All other investment business income, including capital gains or losses, may at the taxpayer's election be included in the computation of the denominator of the business activity formula provided, however, that a taxpayer cannot elect to exclude or include investment business income where the election could result in an understatement of net income reasonably attributable to Iowa. A taxpayer cannot elect to include some investment business income in and exclude other investment business income from the business activity formula. The election applies to all investment income of the taxpayer subject to the election.

For a tax year which begins on or after January 1, 1995, if the taxpayer has investment income subject to an election under the provisions of this rule, a written election shall be made. The election must state whether the taxpayer wishes to include or exclude investment income which is deemed to be business income subject to election under the provisions of this rule in the computation of the business activity formula. The election shall be signed by a duly authorized officer of the corporation. The election is binding on all future tax years unless the taxpayer is granted permission by the director to change the election. If the taxpayer fails to make a written election, the fact that investment income was or was

not included in the computation of the business activity formula shall be deemed to be the taxpayer's election for future years.

The computation of the business activity formula associated with investment income is as follows where the investment income is required to be included in the business activity formula or where an election for inclusion has been made:

a. Interest income from accounts receivable. If an inclusion election is made, accounts receivable interest income is included in the numerator of the business activity formula if the taxpayer receives accounts receivable interest income from customers located in Iowa. Accounts receivable interest income which cannot be segregated by geographical source shall be included in the numerator of the business activity ratio applying the same ratio as gross receipts within Iowa bear to total gross receipts.

EXAMPLE: The taxpayer operates a multistate chain of gasoline service stations, selling for cash and on credit. Interest is charged on credit sales, but the interest income cannot be segregated by geographical source. During the tax year, the taxpayer had gross receipts within Iowa of $300,000, total gross receipts everywhere of $1,000,000, and accounts receivable interest income everywhere of $10,000. $10,000 would be included in the denominator of the business activity formula, and 30 percent of $10,000, or $3,000, would be included in the numerator of the business activity formula.

b. Interest income other than accounts receivable. All other interest income determined to be business income, except nontaxable interest income, shall be included in the numerator of the business activity formula to the extent that the interest-bearing asset is an integral part of some business activity occurring regularly in Iowa. If the interest-bearing asset is not an integral part of some business activity occurring regularly in or outside of Iowa and if an election of inclusion is made, the interest therefrom (except nontaxable interest income) shall be included in the numerator of the business activity formula if the taxpayer's commercial domicile is in Iowa.

EXAMPLE: The taxpayer earns interest income from loans to affiliated corporations, commercial paper, bonds issued by multistate corporations, and federal income tax refunds. The interest income is business income. None of these interest-bearing assets are an integral part of some business activity occurring regularly within or without Iowa. Accordingly, the interest income produced by such assets is subject to an election of inclusion in or exclusion from the business activity formula.

c. Dividend income. All dividend income (net of special deductions) determined to be business income shall be included in the numerator of the business activity formula to the extent that the dividend asset is an integral part of some business activity occurring regularly in Iowa. If the dividend asset is not an integral part of some business activity occurring regularly in or outside of Iowa and if an election of inclusion is made, the dividends shall be included in the numerator of the business activity formula if the taxpayer's commercial domicile is in Iowa.

EXAMPLE: The taxpayer earns dividend income from dividends payable from a mutual fund. The dividend income is business income. The dividends are not an integral part of some business activity occurring regularly within or without Iowa. Assume that the taxpayer had also earned interest income which was business income and which was not an integral part of some business activity occurring regularly within or without Iowa and that the taxpayer had included that interest income in the business activity formula. Under these circumstances, the taxpayer must also include the dividend income in the business activity formula. If no inclusion of investment business income had been made in the business activity formula, the taxpayer would exclude the dividend income from the formula.

d. Rental income. If an inclusion election is made, all rental income determined to be business income shall be included in the numerator of the business activity formula to the extent that property is utilized in Iowa or in its entirety if the taxpayer's commercial domicile is in Iowa and the taxpayer is not taxable in the state in which the property is utilized. The extent of utilization of tangible personal property in a state is determined by multiplying the rent by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental periods in the taxable year. If the physical location of the property during the rental period is unknown or not ascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental payer obtained possession.

e. Royalty income and licensing fees. All royalty income and licensing fees from intangible personal property determined to be business income shall be included in the numerator of the business activity formula to the extent that the royalty or licensing asset is an integral part of some business activity occurring regularly in Iowa. If the royalty or licensing asset is not an integral part of some business activity occurring regularly in or outside of Iowa and if an election of inclusion is made, the royalties or licensing fees shall be included in the numerator of the business activity formula if the taxpayer's commercial domicile is in Iowa.

EXAMPLE: A, a corporation with a commercial domicile outside of Iowa, derives royalties from a trade name that is used by other corporations doing business in Iowa in their Iowa businesses. Since the royalty asset is an integral part of an Iowa business activity, A must include the royalties associated with Iowa business activity in the numerator of A's business activity formula.

EXAMPLE: The taxpayer, a corporation with a commercial domicile in Iowa, derives license fees from others who do business solely outside of Iowa. The license fees are business income. The license fees are an integral part of some business activity carried on regularly by the others outside of Iowa. The taxpayer must include the license fees in the business activity formula. If the taxpayer also had other license fees which were business income and which were not an integral part of some business activity occurring regularly within or without Iowa, these other license fees would be subject to an election of inclusion in or exclusion from the business activity formula.

If an inclusion election is made, all royalty income from tangible personal property or real property determined to be business income shall be included in the numerator of the business activity formula if the situs of the tangible personal property or real property is within Iowa.

f. Gains or losses. Gain or loss from the sale, exchange, or other disposition of real or tangible or intangible personal property, if the property while owned by the taxpayer was operationally related to the taxpayer's trade or business carried on in Iowa, shall be apportioned by the business activity ratio applicable to the return for the year the gain or loss is included in taxable income and shall be included in the computation of the business activity ratio as follows:

(1) Gain or loss from the sale, exchange, or other disposition of real property shall be included in the numerator if the property is located in this state and if an election of inclusion has been made.

(2) Gain or loss from the sale, exchange, or other disposition of tangible personal property shall be included in the numerator if an election of inclusion has been made and if the property has a situs in this state at the time of sale, or the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(3) Gain or loss from the sale, exchange, or other disposition of intangible personal property shall be included in the numerator of the business activity formula to the extent that the intangible personal property is an integral part of some business activity occurring regularly in Iowa in the tax year that gain or loss is recognized. If the intangible personal property is not an integral part of some business activity occurring regularly in or outside of Iowa in the tax year that gain or loss is recognized and if an election of inclusion has been made, the gain or loss shall be included in the numerator if the taxpayer's commercial domicile is in this state.

EXAMPLE: The taxpayer carries on its trade or business within and without Iowa. The taxpayer has patents which it licenses others to use in activities within and without Iowa. The patents are an integral part of business activity occurring regularly within and without Iowa. The taxpayer receives royalty income for the use of the patents. The taxpayer sells the patents and realizes a capital gain. The capital gain from the sale of the patents cannot be segregated by geographical source. Assume that the taxpayer is on a calendar tax year. Assume that the sale occurred on July 1. From January 1 to July 1, 5 percent of the royalties were attributable to some business activity regularly occurring in Iowa. The taxpayer should include 5 percent of the capital gain in the numerator of the business activity formula.

(4) All gain or loss shall be included in the denominator of the business activity ratio if an election of inclusion has been made or if the gain or loss is required to be included in the business activity ratio.

Noninclusive examples of gains or losses from the sale, exchange, or other disposition of real or tangible or intangible property may not be included in the computation of the business activity ratio, because to do so would result in an understatement of net income reasonably attributable to Iowa and

would include the gain recognized under an election pursuant to Section 338 of the Internal Revenue Code and the gain recognized under Section 631(a) of the Internal Revenue Code.

g. Other miscellaneous income. All other miscellaneous income determined to be business income which is not subject to an election or which is the subject of a proper election of inclusion shall be included in the computation of the business activity formula to the extent such income items do not represent a recapture of expense. The miscellaneous income shall be included in the numerator of the business activity formula if the income is from an Iowa source.

h. Other investment income. All other investment income shall be included in the numerator of the business activity formula to the extent that the intangible personal property which produced that income is an integral part of some business activity occurring regularly in Iowa. If the intangible personal property is not part of some business activity occurring regularly in or outside of Iowa and if an election of inclusion has been made, the other investment income shall be included in the numerator if the taxpayer's commercial domicile is in this state.

i. Activity ratio. Income which is not subject to Iowa tax shall not be included in the computation of the business activity ratio.

54.2(4) Grossed-up foreign income. For purposes of administration of the Iowa corporation income tax law, gross-up (Section 78 of the Internal Revenue Code) shall be considered to be nonbusiness income, irrespective of the fact that the income creating the gross-up may be business income, and shall be allocated to the situs of the income payor.

This rule is intended to implement Iowa Code Supplement sections 422.32(2) and 422.33(1).

701—54.3(422) Application of related expense to allocable interest, dividends, rents and royalties—tax periods beginning on or after January 1, 1978. Rule 54.2(422) deals with the separation of "net" income; therefore, determination and application of related expenses must be made, as hereinafter directed, before allocation and apportionment within and without Iowa. Related expenses shall mean those expenses directly related, including related federal income taxes. *Allphin v. Joseph E. Seagram & Sons,* 204 S.W. 2d 515 (Ky. 1956). For tax periods beginning on or after January 1, 2000, related expense includes both directly related expense and indirectly related interest expense. The portion of interest expense indirectly related to allocable interest, other than interest from securities of states and their political subdivisions, dividends, rents and royalties shall be determined by multiplying the net amount of interest expense, after deducting interest directly related to an item of income, by a ratio. The numerator of the ratio is the average value of investments which produce or are held for the production of allocable interest, other than interest from securities of states and their political subdivisions, dividends, rents and royalties. The denominator is the average value of all assets of the taxpayer, less securities of states and their political subdivisions. (*Hunt-Wesson, Inc. v. Franchise Tax Board of California,* No. 98-2043 (U.S. Sup. Ct., filed February 22, 2000)).

A "directly related expense" shall mean an expense which can be specifically attributed to an item of income. Interest expense shall be considered directly related to a specific property which generates, has generated, or could reasonably have been expected to generate gross income if the existence of all of the facts and circumstances described below is established. Such facts and circumstances are as follows: (1) the indebtedness on which the interest was paid was specifically incurred for the purpose of purchasing, maintaining, or improving the specific property; (2) the proceeds of the borrowing were actually applied to the specified purpose; (3) the creditor can look only to the specific property (or any lease or other interest therein) as security for the loan; (4) it may be reasonably assumed that the return on or from the property will be sufficient to fulfill the terms and conditions of the loan agreement with respect to the amount and timing of payment of principal and interest; and (5) there are restrictions in the loan agreement on the disposal or use of the property consistent with the assumptions described in (3) and (4) above.

A deduction for interest may not be considered definitely related solely to specific property, even though the above facts and circumstances are present in form, if any of such facts and circumstances are not present in substance. Any expense directly or indirectly attributable to allocable interest, dividends, rents and royalties shall be deducted from such income to arrive at net allocable income.

EXAMPLE (i): For purposes of this example, it is assumed that the taxpayer has nonbusiness rental income. The taxpayer invests in a 20-story office building. Under the terms of the lease agreements, the taxpayer provides heat, electricity, janitorial services and maintenance. The taxpayer also pays the property taxes. Construction of the building was funded through borrowings which meet the criteria of a direct expense under the provisions of this paragraph. The directly related expenses to the operation of the property are:

Interest expense	$1,200,000
Property taxes	500,000
Depreciation	500,000
Electricity	300,000
Heat	200,000
Insurance	150,000
Janitorial services	100,000
Repairs	50,000
Total expense	$3,000,000

The directly related expense of the allocable nonbusiness rental income is $3,000,000.

EXAMPLE (ii): For purposes of this example, it is assumed that the taxpayer has nonbusiness income. The taxpayer is a multistate manufacturer of processed foods. It has a nonbusiness investment portfolio which is managed by an investment firm for a fee. The fee paid for the management of the portfolio is a directly related expense to the dividends and interest income received. The fee is attributed to the various types of income on the ratio that the various types of income bear to the total income produced.

EXAMPLE (iii): Same as example (ii), except that in addition to the investments described, the taxpayer also has investments in oil properties. The depletion expense is a directly related expense to the oil royalty income.

This rule is intended to implement Iowa Code section 422.33.

701—54.4(422) Net gains and losses from the sale of assets. For purposes of administration of this rule, a capital gain or loss shall mean the sale price or value at the time of disposal of an asset less the adjusted basis, whether reportable as short-term or long-term capital gain or ordinary income for federal income tax purposes.

Nonbusiness gain or loss from the sale, exchange or other disposition of property if the property while owned by the taxpayer was not operationally related to the taxpayer's trade or business carried on in Iowa shall be allocated as follows:

54.4(1) Gains or losses from the sale, exchange or other disposition of real property located in this state are allocable to this state.

54.4(2) Gains and losses from the sale, exchange or other disposition of tangible personal property are allocable to this state if:

a. The property had a situs in this state at the time of sale; or

b. The taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

54.4(3) Gains or losses from the sale, exchange or other disposition of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

54.4(4) Gains or losses from the sale, exchange or other disposition of stock of another corporation, if the activities of the other corporation were not operationally related to the taxpayer's trade or business carried on in Iowa while the stock was owned by the taxpayer, are allocable to this state if the taxpayer's commercial domicile is in this state.

This rule is intended to implement Iowa Code Supplement section 422.33(1).

701—54.5(422) Where income is derived from the manufacture or sale of tangible personal property. The law specifically provides but one method for apportioning net income derived from the manufacture or sale of tangible personal property. The part of such income attributable to business within the state shall be that proportion which the gross sales made within the state bear to the total gross sales.

In determining the total net taxable income, the apportionable income attributable to this state, as determined by use of the apportionment fraction, shall be added to the nonapportionable income allocable to this state.

When a taxpayer is engaged in manufacturing and selling or purchasing and reselling goods or products "gross sales" includes all gross receipts from the sales of such goods or products (or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the tax period) held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business. "Gross receipts" for this purpose means gross sales, less returns and allowances. Federal and state excise taxes shall be included as part of such receipts if such taxes are passed on to the buyer or included as part of the selling price of the product.

54.5(1) Sales of tangible personal property are in this state if the property is delivered or shipped to a purchaser within this state regardless of the f.o.b. point or other conditions of the sales.

54.5(2) Property shall be deemed to be delivered or shipped to a purchaser within this state if the recipient is located in this state, even though the property is ordered from outside this state.

EXAMPLE: The taxpayer, with inventory in State A, sold $100,000 of its products to a purchaser having branch stores in several states including this state. The order for the purchase was placed by the purchaser's central purchasing department located in State B. Twenty-five thousand dollars of the purchase order was shipped directly to purchaser's branch store in this state. The branch store in this state is the "purchaser within this state" with respect to $25,000 of the taxpayer's sales.

54.5(3) Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state.

EXAMPLE: The taxpayer makes a sale to a purchaser who maintains a central warehouse in this state at which all merchandise purchases are received. The purchaser reships the goods to its branch stores in other states for sale. All of the taxpayer's products shipped to a purchaser's warehouse in this state are property "delivered or shipped to a purchaser within this state".

54.5(4) The term "purchaser within this state" shall include the ultimate recipient of the property if the taxpayer in this state, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within this state.

EXAMPLE: A taxpayer in this state sold merchandise to a purchaser in State A. The taxpayer directed the manufacturer or supplier of the merchandise in State B to ship the merchandise to the purchaser's customer in this state pursuant to purchaser's instructions. The sale by the taxpayer is in this state.

54.5(5) When property being shipped by a seller from the state of origin to a consignee in another state is diverted while en route to a purchaser in this state, the sales are in this state.

EXAMPLE: The taxpayer, a produce grower in State A, begins shipment of perishable produce to the purchaser's place of business in State B. While en route the produce is diverted to the purchaser's place of business in this state. The sale by the taxpayer is attributed to this state.

54.5(6) Deliveries for transportation outside the state. The taxpayer sells merchandise to a purchaser outside this state, and the purchaser picks up the produce or makes arrangements to have the product picked up at the taxpayer's place of business in this state to be taken outside the state. The sale by the taxpayer is a sale outside this state.

54.5(7) Dock or pickup sales. The taxpayer sells merchandise to a purchaser within this state, and the purchaser picks up the product at the taxpayer's place of business outside of this state. The sale by the taxpayer is a sale in this state. *Pabst Brewing Co. v. Wis. Dept. of Revenue,* 387 N.W.2d 121 (Wis. App. 1986); *Strickland v. Patcraft Mills, Inc.*, 302 S.E.2d 544 (Ga. 1983); *Olympia Brewing Company v. Commissioner of Revenue,* 326 N.W.2d 642 (Minn. 1982); *Department of Revenue v. Parker Banana Company,* 391 So. 2d 762 (Fla. App. 1980)*; Department of Revenue v. U.S. Sugar Corporation*,

388 So. 2d 596 (Fla. App. 1980). This subrule is effective for tax years beginning on or after January 1, 1989.

This rule is intended to implement Iowa Code section 422.33.

701—54.6(422) Apportionment of income derived from business other than the manufacture or sale of tangible personal property. Income derived from business other than the manufacture or sale of tangible personal property shall be attributed to Iowa in the proportion which the Iowa gross receipts bear to the total gross receipts. Gross receipts are includable in the numerator of the apportionment factor in the proportion which the recipient of the service receives benefit of the service in this state.

54.6(1) Services other than those set forth in subrules 54.6(3) to 54.6(5) and rule 701—54.7(422). With respect to a specific contract or item of income, all gross receipts from the performance of services are includable in the numerator of the apportionment factor if the recipient of the service receives all of the benefit of the service in Iowa. If the recipient of the service receives some of the benefit of the service in Iowa with respect to a specific contract or item of income, the gross receipts are includable in the numerator of the apportionment factor in proportion to the extent the recipient receives benefit of the service in Iowa.

The following are noninclusive examples of the application of this subrule.

a. A real estate development firm from State A is developing a tract of land in Iowa. The real estate development firm from State A engages a surveying company from State B to survey the tract of land in Iowa. The survey work is completed and the plats are drawn in Iowa. The gross receipts from this survey work are attributable to Iowa and included in the numerator of the apportionment factor because the recipient of the service received all of the benefits of the service in Iowa.

b. A corporation headquartered in State Y is building an office complex in Iowa. The corporation from State Y contracts with an engineering firm from State X to oversee construction of the buildings on the site. The engineering firm performs some of their service in Iowa at the building site and also some of their service in State X. The gross receipts from the engineering service are attributable to Iowa and included in the numerator of the apportionment factor because the recipient of the service received all of the benefit of the service in Iowa.

c. A corporation from State A contracts with a computer software company from State D to develop and install a custom software application in a business office in Iowa of the company from State A. The software firm does consulting work on the project in State A and in Iowa. The software development is done in State D and in Iowa. The software package is delivered to the corporation from State A in Iowa. The gross receipts from the software development are attributable to Iowa and included in the numerator of the apportionment factor because the recipient of the service received all of the benefit of the service in Iowa.

d. A corporation located in Iowa performs direct mail activities for a customer located in State X. The direct mail activities include the preparation and mailing of materials to households located throughout the United States. The corporation located in Iowa performed some activities related to the direct mail contract in State X. One percent of the direct mailings went to addresses within Iowa. One percent of the gross receipts related to this direct mail contract are attributable to Iowa and included in the numerator of the apportionment factor because the recipient of the service received the 1 percent of the benefit of the service in Iowa.

e. A corporation located in State A performs direct mail activities for a customer located in State X. The corporation has nexus with Iowa due to other activities of the unitary business. The direct mail activities include the preparation and mailing of materials to households throughout the United States. The corporation located in State A printed and mailed the direct mail materials to households on a mailing list prepared by the direct mailing company in State A. Five percent of the direct mailings went to addresses within Iowa. Five percent of the gross receipts related to this direct mail contract are attributable to Iowa and included in the numerator of the apportionment factor.

f. A company which owns apartments in Iowa and State A contracts with a pest control corporation for pest control activities. One contract is entered into which covers 100 apartment units in Iowa and 400 apartment units in State A. Twenty percent (100/500) of the gross receipts from the pest

control contract are attributable to Iowa and are included in the numerator of the apportionment factor as 20 percent of the apartment units are located in Iowa and in the absence of more accurate records, it is presumed that the number of apartment units is the best measure of the extent the recipient of the service received benefit of the service in Iowa.

If a taxpayer does not believe that the method of apportionment set forth in this subrule reasonably attributes income to business activities within Iowa, the taxpayer may request the use of an alternative method of apportionment. The request must be filed at least 60 days before the due date of the return, considering any extensions of time to file, in which the taxpayer wishes to use an alternative method of apportionment. The request should be filed with Policy Section, Compliance Division, P.O. Box 10457, Des Moines, Iowa 50306-0457. The taxpayer must set forth in detail the extent of the taxpayer's business operations within and without the state, along with the reasons why the apportionment method set forth in this subrule is inappropriate. In addition, the taxpayer must set forth a proposed method of apportionment and the reasons why the proposed method of apportionment more reasonably attributes income to business activities in Iowa.

If the department agrees that the proposed method of apportionment more reasonably attributes income to business activities in Iowa, the taxpayer may continue to use the proposed method of apportionment until the taxpayer's factual situation changes or the department prospectively informs the taxpayer that the method of apportionment may no longer be used.

If the taxpayer's factual situation changes and under the new factual situation the taxpayer still believes that the method of apportionment set forth in this subrule still is not appropriate, then the taxpayer must submit a new request for the use of an alternative method of apportionment.

If the taxpayer disagrees with the determination of the department, the taxpayer may file a protest within 60 days of the date of the letter setting forth the department's determination and the reasons therefor in accordance with rule 701—7.41(17A). The department's determination letter shall set forth the taxpayer's rights to protest the department's determination.

54.6(2) If the business activity consists of providing services, such as the operation of an advertising agency, or the performance of equipment service contracts, research and development contracts, "sales" includes the gross receipts from the performance of such services including fees, commission, and similar items.

In the case of cost plus fixed fee contracts, such as the operation of a government-owned plant for a fee, gross receipts include the entire reimbursed cost, plus the fee.

54.6(3) Business income of a financial organization, excepting a financial institution exempted from the corporation income tax under Iowa Code section 422.34(1) attributable to Iowa shall be:

a. In the case of taxable income of a taxpayer whose income-producing activities are confined solely to this state, the entire net income of such taxpayer.

b. In the case of taxable income of a taxpayer who conducts income-producing activities as a financial organization partially within and partially without this state, that portion of its net income as its gross business in this state is to its gross business everywhere during the period covered by its return, which portion shall be determined as the sum of:

(1) Fees, commission or other compensation for financial services rendered for a customer located in this state or an account maintained within this state;

(2) Gross profits from trading in stocks, bonds or other securities rendered for a customer located within this state;

(3) Interest income from a loan on real property located in this state. Interest and other receipts from assets in the nature of loans and installment obligations if the borrower is located within this state. Other fees and other miscellaneous earnings if connected with loans to borrowers within this state;

(4) Interest charged to customers within this state or to accounts maintained within this state for carrying debit balances of margin accounts, without deduction of any costs incurred in carrying such accounts;

(5) Interest, lease payments, or other receipts from financing leases, installment sales contracts, leases or other financing instruments received from customers within this state; and

(6) Any other gross income resulting from the operation as a financial organization within this state.

A "financial organization" means any finance company or investment company doing business in Iowa. A finance company includes any consumer finance company, sales finance company, or commercial finance company making loans to individuals and businesses. An investment company includes a company primarily engaged in the business of investing, reinvesting, owning, holding or trading in securities.

54.6(4) Net business income of construction contractors shall be attributed to Iowa in the proportion which Iowa gross receipts bear to total gross receipts. Iowa gross receipts are those gross receipts from contracts performed in Iowa.

54.6(5) A corporation's distributive share of net income or loss from a joint venture, limited liability company, or partnership is subject to apportionment within and without the state. If the income of the partnership, limited liability company, or joint venture is received in connection with the taxpayer's regular trade or business operations, the partnership, limited liability company, or joint venture income shall be apportioned within and without Iowa on the basis of the taxpayer's business activity ratio. The corporation's distributive share of the gross receipts of the partnership, limited liability company, or joint venture shall be included in the computation of the business activity ratio in accordance with the provisions of this chapter.

EXAMPLE 1: A, a corporation with a commercial domicile in State X, is engaged in business within and without Iowa whereby A sells tangible personal property. A also has an interest in a limited partnership whose business is conducted within and without Iowa. Five percent of the limited partnership's gross receipts are derived from the sale of tangible personal property to Iowa purchasers and 95 percent are derived from sales and deliveries to purchasers outside of Iowa. A will include 5 percent of its distributive share of the gross receipts of the partnership in the numerator along with A's destination Iowa sales in calculating its business activity ratio. A will include 100 percent of its distributive share of the gross receipts in the denominator along with A's total sales in calculating its business activity ratio.

EXAMPLE 2: B, a corporation with a commercial domicile in State X, has no physical presence in the state of Iowa. B's only contact with Iowa is B's interest in a limited partnership whose business is conducted within and without Iowa. Ten percent of the limited partnership's gross receipts are derived from the sale of tangible personal property to Iowa purchasers and 90 percent are derived from sales and deliveries to purchasers outside of Iowa. B will include 10 percent of its distributive share of the gross receipts of the partnership in the numerator in calculating its business activity ratio. B will include 100 percent of its distributive share of the gross receipts in the denominator along with B's total sales in calculating its business activity ratio.

54.6(6) Gross receipts from rent or royalties or other fees received for the use of real property are attributable to this state if the real property is located in this state.

Gross receipts from rent, royalties, license fees, or other fees received for the use of tangible personal property are attributable to this state to the extent that the property is utilized in this state. The extent of utilization of tangible personal property in this state is determined by multiplying the rents, royalties, license fees or other fees by a fraction, the numerator of which is number of days or other measure of physical location of the property in the state during the rental period in the taxable year and the denominator of which is the number of days or other measure of physical location of the property everywhere during all rental periods in the taxable year. If the physical location of property during the rental period is unknown or not ascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental payer obtained possession.

An example of another measure of physical location of property is where a lessee of transportation equipment is required to report to the lessor miles traveled by state.

a. A lessee takes possession of a rental car in this state. Six days later after driving 1,500 miles, the rental car is returned to the lessor in this state. Absent evidence to the contrary, the rental receipts are attributable to this state.

b. A lessee takes possession of a rental car in this state. Six days later after driving 1,500 miles, the rental car is returned to the lessor in an adjacent state. Absent evidence to the contrary, it is assumed that 50 percent of the rental receipts are attributable to this state.

c. A lessee takes possession of a rental semi-truck in another state. The lessee is required to maintain mileage records by state for purposes of special fuel tax. The lessee provides copies of these records to the lessor. The lessor must use these records to determine the portion of the rental receipts that are attributable to this state.

This rule is intended to implement Iowa Code Supplement section 422.33(1).

701—54.7(422) Apportionment of income of transportation, communications, and certain public utilities corporations. Net income of these corporations, other than interest, dividends, rents and royalties, which is not specifically allocated by 54.2(422) and 54.6(422) shall be apportioned as follows:

54.7(1) Railroads shall determine their Iowa proportion of gross receipts or gross revenue from railroad operations by the following methodology:

a. Freight revenue. Freight revenue within and without Iowa shall be determined for each individual freight movement by taking the proportion of car and locomotive miles traveled in Iowa to total car and locomotive miles traveled within and without Iowa for the individual freight movement and applying such individual percentage to the gross receipts derived from the individual freight movement. Empty mileage that does not produce gross receipts shall not be used.

b. Passenger revenue. Passenger revenue within and without Iowa shall be determined by use of the same principles applicable to freight revenue.

c. Switching revenue. Unless the switching revenue is accounted for in the freight revenue or passenger revenue categories, it shall be determined in accordance with subrule 54.6(1).

d. Miscellaneous revenue. Nonexclusive examples of miscellaneous revenues include demurrage revenue, station services revenue, storage revenue, railway property rental, joint facility revenue, and amounts received from government authorities. These revenues shall be attributed to the state in which they were earned.

e. All of the above classes of revenues shall be aggregated and combined with other gross receipts or gross revenues from sources within Iowa to compose the numerator. The denominator shall be computed in accordance with 701—subrule 54.2(2).

54.7(2) Airline, truck and bus line companies, water transportation companies, freight car and equipment companies shall determine their Iowa proportion of gross receipts or gross revenues derived from transportation operations by taking the proportion of mileage traveled in Iowa to the total mileage traveled within and without the state.

54.7(3) Oil, gasoline, gas and other pipeline companies shall determine the proportion of transportation revenue derived from interstate business that is attributable to Iowa by the proportion of Iowa traffic units to total traffic units. The "traffic unit" of an oil pipeline is defined as the transportation of one barrel of oil for a distance of one mile; the "traffic unit" of a gasoline pipeline is defined to be the transportation of one barrel of gasoline for a distance of one mile; and a "traffic unit" of a gas pipeline is defined to be the transportation of 1,000 cubic feet or one dekatherm of natural or casinghead gas for a distance of one mile. The taxpayer may use either 1,000 cubic feet or one dekatherm as a "traffic unit" as long as the numerator and denominator are computed on the same basis. Any other pipeline company will use the definition of the "traffic unit" which would most nearly describe the substance transported.

54.7(4) Telecommunications companies shall determine the Iowa proportion of gross receipts or gross revenues from telecommunication operations by the following methodology:

a. Gross receipts or gross revenues from local service in this state are attributable to this state.

b. Gross receipts or gross revenues from toll services originating and terminating in this state are attributable to this state.

c. Gross receipts or gross revenues from interstate toll services originating in this state and charged to an Iowa service address are attributable to this state.

d. Gross receipts or gross revenues from interstate toll services terminating in this state and charged to an Iowa service address are attributable to this state.

e. Gross receipts or gross revenues from the sale of phone cards in this state are attributable to this state.

f. Gross receipts or gross revenues from the sale of telecommunication services to resellers of telecommunication services for telecommunication services used for local service in this state are attributable to this state.

g. Gross receipts or gross revenues from the sale of telecommunication services to resellers of telecommunication services for telecommunication services used for toll services originating and terminating in this state are attributable to this state.

h. Gross receipts or gross revenues from the sale of telecommunication services to resellers of telecommunication services for telecommunication services used for interstate toll services originating in this state are attributable to this state.

i. Gross receipts or gross revenues from Internet access originating in this state and charged to an Iowa service address are attributable to this state.

j. Gross receipts or gross revenues from cellular phone services originating in this state and charged to an Iowa service address are attributable to this state.

k. Gross receipts or gross revenues from personal communication services originating in this state and charged to an Iowa service address are attributable to this state.

l. Gross receipts or gross revenues from paging services originating in this state and charged to an Iowa service address are attributable to this state.

m. Services originating in this state and charged to an Iowa service address are attributable to this state.

n. Gross receipts from cable television, satellite television, and community antenna television services, including gross receipts from providing Internet access, charged to an Iowa service address are attributable to this state.

o. Any other gross receipts or gross revenues from fees, access charges, toll services or other charges for communication services charged to an Iowa service address are attributable to this state. See *Goldberg v. Sweet*, 488 U.S. 252, 102 L.Ed. 2d 607, 109 S.Ct. 582 (1989).

p. All of the above classes of revenues shall be aggregated and combined with other gross receipts or gross revenues from sources within Iowa to compose the numerator. The denominator shall be computed in accordance with 701—subrule 54.2(2).

q. "Telecommunications" is an electronic mode of transmitting data, information, and audio and video signals and includes but is not limited to both one-way and two-way signals using land-line phones, cellular phones, paging devices, satellites, and microwave systems. Telecommunications is a medium or mode of delivery, not the actual content of the information transmitted over the medium. Telecommunications does not include broadcast radio and television. See subrule 54.7(5).

r. The term "telecommunication companies" includes but is not limited to: telephone companies; resellers of telephone services; cellular phone companies; personal communication service providers; paging service providers; radio communication providers; Internet access providers; cable television, satellite television, community antenna television companies; and other companies of a similar type.

If a taxpayer feels that the allocation and apportionment method as prescribed by Iowa Code subsection 422.33(2) and in this subrule, in the taxpayer's case, results in an injustice, the taxpayer may petition the department for permission to determine the taxable net income, both allocable and apportionable, to this state on some other basis. See rule 701—54.9(422).

54.7(5) Radio and television companies doing business within and without Iowa shall determine their Iowa proportion of gross receipts or gross revenues derived from broadcasting operations by taking the proportion of the Iowa population served by broadcasting to the total population served by broadcasting. The population served by broadcasting shall be determined by a recognized market survey such as Arbitron. As used in this rule the term "population served by broadcasting" includes all of the residents of the broadcasting area, whether or not these residents individually elect to receive the broadcasts.

EXAMPLE: A television company has its studio and transmitter in state A. The activities of the employees and corporate officers of the television company in Iowa include solicitation of advertising, covering special news events and covering athletic events. The broadcast signal also reaches state B but the television company does not conduct any activities in state B. The population served by

broadcasting is as follows: 100,000 in Iowa, 100,000 in state A, and 50,000 in state B for a total population served by broadcasting of 250,000. The television company's apportionment factor would be computed as follows: The numerator would be the Iowa population served by broadcasting and the denominator would be the total population served by broadcasting (100,000 ÷ 250,000 = 40%).

Subrule 54.7(5) is effective for tax years beginning on or after January 1, 1988.

54.7(6) Corporations in the business of publishing, selling, licensing, or distributing newspapers, magazines, periodicals, trade journals, or other printed material, or which publish, sell, license or distribute in a filmed or microfilmed image, or in an electronic media, an electronic virtual storage system or broadcasts any of the above items which have been traditionally disseminated in a printed format shall determine the Iowa portion of gross receipts by the following methodology:

a. Gross receipts from the sale of tangible personal property including printed materials, electronic storage media, fees for use of an electronic virtual storage system or fees to receive a broadcast delivered, shipped or broadcast to a purchaser or a subscriber in this state.

b. Gross receipts from advertising shall be attributed to Iowa as determined by the taxpayer's circulation factor during the tax period. The circulation factor shall be determined for each individual publication of the taxpayer containing advertising and shall be equal to the ratio that the taxpayer's Iowa circulation to purchasers and subscribers of its printed material, electronic storage media, electronic virtual storage system or broadcasts containing advertising bears to its total circulation to purchasers and subscribers everywhere.

The circulation factor for an individual publication shall be determined by reference to the rating statistics as reflected in such sources as the Audit Bureau of Circulations or other comparable sources, provided that the source selected is consistently used from year to year for such purpose. If none of the foregoing sources are available, or, if available, none is in a form or content sufficient for such purposes, then the circulation factor shall be determined from the taxpayer's books and records.

c. When specific items of advertisement can be shown, upon clear and convincing evidence, to have been distributed solely to a limited regional or local geographic area of which this state is a part, the taxpayer may petition, or the director may require, that all or a portion of such receipts be attributed to this state on the basis of a regional or local geographic area circulation factor and not upon the basis of the circulation factor provided by *"b"* above.

Such attribution shall be based on the ratio that the taxpayer's circulation to purchasers and subscribers located in this state bears to its total circulation to purchasers and subscribers located within such regional or local geographic area. This alternative attribution method shall be permitted only on the condition that such receipts are not double counted or otherwise included in the numerator of any other state.

54.7(7) Utility companies shall determine their Iowa gross receipts or gross revenues from transporting natural or casinghead gas for others that is attributable to Iowa by the proportion of Iowa traffic units to total traffic units. The "traffic unit" is defined to be the transportation of 1,000 cubic feet or one dekatherm of natural or casinghead gas for a distance of one mile. Where the transportation is less than one mile, the taxpayer must accumulate the fractions of one mile into one-mile increments for purposes of computing "traffic units." The taxpayer may use either 1,000 cubic feet or one dekatherm as a "traffic unit" as long as the numerator and denominator are computed on the same basis.

If a taxpayer feels that the allocation and apportionment method as prescribed by Iowa Code subsection 422.33(2) and in this subrule, in the taxpayer's case, results in an injustice, the taxpayer may petition the department for permission to determine the taxable net income, both allocable and apportionable, to this state on some other basis. See rule 701—54.9(422).

54.7(8) Utility companies shall determine their Iowa gross receipts or gross revenues from transporting electricity for others that is attributable to Iowa by the proportion of Iowa traffic units to total traffic units. The "traffic unit" is defined to be the transportation of 1,000 kilowatt-hours of electricity for a distance of one mile. Where the transportation is less than one mile, the taxpayer must accumulate the fractions of one mile into one-mile increments for purposes of computing "traffic units."

If a taxpayer feels that the allocation and apportionment method as prescribed by Iowa Code subsection 422.33(2) and in this subrule, in the taxpayer's case, results in an injustice, the taxpayer

may petition the department for permission to determine the taxable net income, both allocable and apportionable, to this state on some other basis. See rule 701—54.9(422).

This rule is intended to implement Iowa Code section 422.33.

701—54.8(422) Apportionment of income derived from more than one business activity carried on within a single corporate structure. Net income from corporations where more than one business activity is conducted within a single unitary corporate structure shall be apportioned by combining gross receipts or gross revenues of each business activity in the business activity ratio. Where necessary, formulas authorized by the department's rules or statute shall be used to ascertain the gross receipts from such business activities.

EXAMPLE: The taxpayer is engaged in the business of both manufacture of tangible personal property and trucking. During the tax year, the taxpayer received $1,000,000 in gross receipts, $400,000 of which was from its manufacturing operations and $600,000 of which was from its trucking operations. In its trucking operations, the taxpayer traveled 100,000 miles in Iowa and 400,000 everywhere, and in its manufacturing operations, $300,000 of sales were attributable to this state. The numerator of the business activity ratio would be $450,000, which includes $300,000 from manufacturing operations and $150,000 (100,000/400,000 × 600,000 = 150,000) from trucking operations. See subrule 54.7(2). The denominator of the business activity ratio would be $1,000,000.

This rule is intended to implement Iowa Code section 422.33.

701—54.9(422) Allocation and apportionment of income in special cases. If a taxpayer feels that the allocation and apportionment method as prescribed by Iowa Code subsection 422.33(2), or 701—Chapter 54, in the taxpayer's case results in an injustice, the taxpayer may petition the department for permission to determine the taxable net income, both allocable and apportionable, to the state on some other basis.

The taxpayer must first file the return as prescribed by Iowa Code subsection 422.33(2), and pay the tax shown due thereon. If a change to some other method is desired, a statement of objections and schedules detailing such alternative method shall be submitted to the department. The department shall require detail and proof within such time as the department may reasonably prescribe. In addition, the alternative method of allocation and apportionment will not be allowed where the taxpayer fails to produce, upon request of the department, any information the department deems necessary to analyze the request for an alternative method of allocation and apportionment. Such petition must be in writing and shall set forth in detail the facts upon which the petition is based. The burden of proof will be on the taxpayer as to the validity of the method and its results. The mere fact that an alternative method of apportionment or allocation produces a lesser amount of income attributable to Iowa is, per se, insufficient proof that the statutory method of allocation and apportionment is invalid. *Moorman Manufacturing Company v. Bair,* 437 U.S. 267, 57 L.Ed.2d 197(1978). In essence, a comparison of the statutory method of apportionment with another formulary apportionment method is insufficient to prove that the taxpayer would be entitled to the alternative formulary apportionment method. *Moorman Manufacturing Company v. Bair,* supra.

One of the possible alternative methods of allocation and apportionment is separate accounting provided the taxpayer's activities in Iowa are not unitary with the taxpayer's activities outside Iowa. Any corporation deriving income from business operations partly within and partly without Iowa must determine that net business income attributable to this state by the prescribed formula for apportioning net income, unless the taxpayer proved by clear and cogent evidence that the statutory formula apportions income to Iowa out of all reasonable proportion to the business transacted within Iowa. *Moorman Manufacturing Company v. Bair,* supra.

The burden of proof that the statutory method of apportionment attributes to Iowa income out of all reasonable proportion to the business transacted within Iowa is on the taxpayer. In order to utilize separate accounting, the taxpayer's books and records must be kept in a manner that accurately depicts the exact geographical source of profits. In any petition to utilize separate accounting, the taxpayer must submit schedules which accurately depict net income by division or product line and the amount of income earned within Iowa.

Separate accounting is not allowable for a unitary business where the separate accounting method fails to consider factors of profitability resulting from functional integration, centralization of management, and economics of scale. *Shell Oil Company v. Iowa Department of Revenue,* 414 N.W.2d 113 (Iowa 1987).

There are alternative methods of separate accounting utilizing different accounting principles. A mere showing that one separate accounting method produces a result substantially different than the statutory method of apportionment is not sufficient to justify the granting of the separate accounting method shown. The taxpayer must not only show that the separate accounting method advocated by the taxpayer in comparison with the statutory method of apportionment produces a result which, if the statutory method of apportionment were used, would be out of all reasonable proportion to the business transacted within Iowa. The taxpayer must also show that all other conceivable reasonable separate accounting methods would show, when compared with the statutory method of apportionment, that the statutory method of apportionment substantially produces a distorted result.

As used in this rule "statutory method of apportionment" means the Iowa single sales factor formula set forth in Iowa Code section 422.33, subsection 2, paragraph *"b,"* and the apportionment methods set forth in 701—Chapter 54.

All requests to use an alternative method of allocation and apportionment submitted to the department will be considered by the compliance division if the request is the result of an audit or by the policy section of the compliance division if the request is received prior to audit. If the department concludes that the statutory method of allocation and apportionment is, in fact, both inapplicable and inequitable, the department shall prescribe a special method. The special method of allocation and apportionment prescribed by the department may be that requested by the taxpayer or some other method of allocation and apportionment which the department deems to equitably attribute income to business activities carried on within Iowa.

If the taxpayer disagrees with the determination of the department, the taxpayer may file a protest within 60 days of the date of the letter setting forth the department's determination and the reasons therefor in accordance with rule 701—7.41(17A). The department's determination letter shall set forth the taxpayer's rights to protest the department's determination.

If no protest is filed within the 60-day period, then no hearing will be granted on the department's determination under this rule. However, this does not preclude the taxpayer from subsequently raising this question in the event that the taxpayer protests an assessment or denial of a timely refund claim, but this issue will only be dealt with for the years involved in the assessment or timely refund claim.

The use of an alternative method of allocation and apportionment would only be applicable to the years under consideration at the time the special method of allocation and apportionment is prescribed. The taxpayer's continued use of a prescribed method of allocation and apportionment will be subject to review and change within the statutory or legally extended period(s).

If there is a material change in the business operations or accounting procedures from those in existence at the time the taxpayer was permitted to determine the net income earned within Iowa by an alternative method of allocation and apportionment, the taxpayer shall apprise the department of such changes prior to filing its return for the current year. After reviewing the information submitted, along with any other information the department deems necessary, the department will notify the taxpayer if the alternative method of allocation and apportionment is deemed applicable.

This rule is intended to implement Iowa Code section 422.33.

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◊ Two or more ARCs

CHAPTER 55
ASSESSMENTS, REFUNDS, APPEALS
[Prior to 12/17/86, Revenue Department[730]]

701—55.1(422) Notice of discrepancies.

55.1(1) *Notice of adjustment.* An employee of the department, designated by the director to examine returns and make audits, who discovers discrepancies in returns or learns that the income of the taxpayer may not have been listed, in whole or in part, or that no return was filed when one was due, is authorized to notify the taxpayer of the discovery by ordinary mail. The notice shall not be termed an assessment, and it may inform the taxpayer of the amount due if the information discovered is correct.

55.1(2) *Right of taxpayer upon receipt of notice of adjustment.* A taxpayer who has received notice of an adjustment in connection with a return may pay the additional amount stated to be due. If payment is made, and the taxpayer wishes to contest the matter, the taxpayer should then file claim for refund. However, payment will not be required until assessment has been made (although interest will continue to accrue if payment is not made). If no payment is made, the taxpayer may discuss with the employee who notified the taxpayer of the discrepancy, either in person or through correspondence, all matters of fact and law which the taxpayer considers relevant to the situation. Documents and records supporting the taxpayer's position may be required.

This rule is intended to implement Iowa Code section 422.25.

701—55.2(422) Notice of assessment. If after following the procedure outlined in 55.1(2) no agreement is reached, and the taxpayer does not pay the amount determined to be correct, a notice of assessment shall be sent to the taxpayer by mail. If the period in which the correct amount of tax can be determined is nearly at an end, either a notice of assessment, without compliance with 55.1(1) and 55.1(2), or a jeopardy assessment may be issued. All notices of assessment shall contain the signature of the director.

This rule is intended to implement Iowa Code sections 422.25 and 422.28.

701—55.3(422) Refund of overpaid tax. The following are provisions for refunding or crediting to the taxpayer deposits or payments for tax in excess of amounts legally due.

55.3(1) A claim for refund of corporation income tax may be made on a form obtainable from the department. Claims for refund should not be mailed in the same envelope or attached to the return. In the case of a claim filed by an agent of the taxpayer, a power of attorney must accompany the claim.

55.3(2) A corporate taxpayer shall not offset a refund or overpayment of tax for one year as a prior payment of tax of a subsequent year on the return of a subsequent year without authorization in writing by the department. The department may, however, apply an overpayment, or a refund otherwise due the taxpayer, to any tax due or to become due from the taxpayer.

55.3(3) When an overpayment of estimated tax is indicated on the face of the return, the overpayment will ordinarily be refunded to the taxpayer by the department without the filing of a formal claim for refund. If a refund of the indicated overpayment is not received within a reasonable period of time, a claim for refund may be filed by the taxpayer on an official form obtainable from the Taxpayer Services Section, Iowa Department of Revenue, P.O. Box 10457, Des Moines, Iowa 50306.

If an overpayment of income tax is claimed as a credit against estimated tax for the succeeding taxable year, such amount shall be considered as a payment of the income tax for the succeeding taxable year and no claim for credit or refund shall be allowed.

When a taxpayer elects to have an overpayment credited to estimated tax for the succeeding year, interest may be properly assessed on a deficiency of income tax for the year in which the overpayment arose. If a taxpayer elects to have all or part of an overpayment shown on the return applied to the estimated income tax for the succeeding taxable year or refunded, the election is binding to the taxpayer.

An overpayment of tax may be used to offset any outstanding tax liability owed by the taxpayer, but once an elected amount is credited as a payment of estimated tax for the succeeding year, it loses its character as an overpayment for the year in which it arose and thereafter cannot offset any subsequently determined tax liability.

55.3(4) Rescinded IAB 11/24/04, effective 12/29/04.

55.3(5) Refunds—statute of limitations for tax years ending after January 1, 1979. The statute of limitations with respect to which refunds or credits may be claimed are:

a. The later of

(1) Three years after the due date of payment upon which refund or credit is claimed; or

(2) One year after which such payment was actually made.

b. Six months from the date of final disposition of any federal income tax matter with respect to the particular tax year. The taxpayer, however, must have notified the department of the matter within six months after the specified three-year period. The term "matter" includes, but is not limited to the execution of waivers and commencement of audits. The refund is limited to those matters between the taxpayer and the Internal Revenue Service which affect Iowa taxable income. *Kelly-Springfield Tire Co. v. Iowa State Board of Tax Review,* 414 N.W.2d 113 (Iowa 1987).

c. For federal audits finalized on or after July 1, 1991, the taxpayer must claim a refund or credit within six months of final disposition of any federal income tax matter with respect to the particular tax year regardless when the tax year ended. It is not necessary for the taxpayer to have previously notified the department within the period of limitations specified in 55.3(5)*"a"*(1) of a matter between the taxpayer and the Internal Revenue Service in order to receive a refund or credit. The term "matter" includes, but is not limited to, the execution of waivers and commencement of audits. The refund or credit is limited to those matters between the taxpayer and the Internal Revenue Service which affect Iowa taxable income. *Kelly-Springfield Tire Co. v. Iowa State Board of Tax Review,* 414 N.W.2d 113 (Iowa 1987).

d. Three years after the due date of the return for the year in which a net operating loss or capital loss occurs, which if carried back results in a reduction of tax in a prior period and an overpayment results.

55.3(6) Refunds—special statute of limitations. Notwithstanding the above periods of limitation, a claim for credit or refund is considered timely if the claim is filed with the department on or before June 30, 1999, if the taxpayer's federal income tax was refunded due to a provision in the Taxpayer Relief Act of 1997, Public Law 105-34, which affected the corporation's federal taxable income and the claim is based on the change in federal taxable income caused by the provisions of Public Law 105-34.

55.3(7) Refunds—statute of limitations for taxpayers who paid 90 percent of the tax by the due date and filed the original return in the six-month extended period. If a taxpayer has paid 90 percent of the income tax required to be shown due by the original due date of the return and has filed the original income tax return sometime in the six-month extended period after the original due date, the taxpayer may file an amended return within three years of the extended due date of the return and shall be within the statute of limitations for refund. This position is supported by the Iowa Supreme Court in *Conoco, Inc. v. Iowa Department of Revenue and Finance*, 477 N.W.2d 377 (Iowa 1991). See also 701—subrule 39.2(4) which pertains to the extended period for filing the Iowa income tax return when 90 percent of the tax is paid by the original due date of the Iowa income tax return.

EXAMPLE 1. Corporation A had paid at least 90 percent of the tax shown due on its Iowa corporation income tax return for the year ending December 31, 1999, by the April 30 original due date and filed its original 1999 Iowa return on May 15, 2000. Corporation A determined that it was entitled to claim additional deductions on the original 1999 Iowa return, so Corporation A filed an amended 1999 return on October 31, 2003. The amended return was filed within the three-year statute of limitations for refund since it was filed within three years of the extended due date of the return, October 31, 2000. The six-month extended due date applied in this case because the original return was filed within the six-month extended period.

EXAMPLE 2. Corporation B paid 90 percent of the tax shown due on its return for the period ending June 30, 2000, by the October 31 original due date and filed the original return on or before the October 31, 2000, original due date for this return. Corporation B determined that when it filed the original Iowa return for the period ending June 30, 2000, Corporation B failed to claim an Iowa credit for increasing research activities. Corporation B filed an amended Iowa return on November 15, 2003, to claim the Iowa credit for increasing research activities. This amended return was rejected by the department because

it was not filed within three years of the due date of the return. Although Corporation B had paid 90 percent of the tax by the due date, the due date was not extended because the original return had been filed by the due date of October 31, 2000.

This rule is intended to implement Iowa Code section 422.73 as amended by 1998 Iowa Acts, Senate File 2357.

701—55.4(421) Abatement of tax. For notices of assessment issued on or after January 1, 1995, if the statutory period for appeal has expired, the director may abate any portion of unpaid tax, penalties or interest which the director determines to be erroneous, illegal, or excessive. See rule 701—7.31(421) for procedures on requesting abatement of tax.

This rule is intended to implement Iowa Code section 421.60.

701—55.5(422) Protests. A taxpayer may appeal to the director at any time within 60 days from the date of the notice of the assessment of tax, additional tax, interest or penalties. For assessments issued on or after January 1, 1995, if a taxpayer failed to timely appeal a notice of assessment, the taxpayer may pay the entire assessment and file a refund claim within the period provided by law for filing such claims. In addition, a taxpayer may appeal to the director at any time within 60 days from the date of notice from the department denying changes in filing methods, denying refund claims, or denying portions of refund claims.

This rule is intended to implement Iowa Code sections 421.10, 421.60 and 422.28.

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CHAPTER 56
ESTIMATED TAX FOR CORPORATIONS
[Prior to 12/17/86, Revenue Department[730]]

701—56.1(422) Who must pay estimated tax.

56.1(1) *General rule.* Every corporate taxpayer, including both domiciliary and nondomiciliary corporations, shall pay estimated tax if the amount of tax payable, less credits, can reasonably be expected to be more than $1,000 for the calendar or fiscal year. The amount of estimated tax paid shall be used as a credit on the Iowa corporate income tax return.

56.1(2) *Definition.* For purposes of this division, "estimated tax" means the amount which the taxpayer estimates to be the tax due and payable under division III of Iowa Code chapter 422.

This rule is intended to implement Iowa Code section 422.85.

701—56.2(422) Time for filing and payment of tax.

56.2(1) *Time for filing.*

a. *General rule.* The date for filing the first estimated tax payment is on or before the last day of the fourth month of the tax year. The estimated tax form is to be filed with Corporate Estimate Processing, P.O. Box 10466, Des Moines, Iowa 50306.

b. *Amended estimates.* Generally, whenever a taxpayer who is required to make estimated tax payments has reason to believe that the taxpayer's Iowa income tax may increase or decrease, an amended estimate shall be filed at such time to reflect the increase or decrease in estimated Iowa income tax. The amended estimate shall be made on or before the next installment date. The unpaid balance after amending the estimate should be paid in equal installments on the remaining payment dates.

56.2(2) *Payment of estimated tax.*

a. *General rule.* Estimates may be paid in full at the time of the first filing or in four equal installments. The taxpayer may also elect to pay any installment prior to the date prescribed.

b. *Calendar year.* The first installment for a corporation filing on a calendar-year basis is due by April 30. The other installments, if applicable, shall be paid on or before June 30, September 30, and December 31, of the current year.

c. *Fiscal year.* The installment dates for a corporation filing on a fiscal-year basis are:

Installment No. 1. The last day of the fourth month of the fiscal year.

Installment No. 2. The last day of the sixth month of the fiscal year.

Installment No. 3. The last day of the ninth month of the fiscal year.

Installment No. 4. The last day of the twelfth month of the fiscal year.

d. *Electronic transfer payments.* For installments due on or after April 1, 1990, for tax years beginning on or after January 1, 1990, installments shall be made electronically in a format and by means specified by the department of revenue when total corporate tax liability for the tax year prior to the tax year just completed exceeds $80,000. Estimated tax declaration forms are not required to be filed when electronic transmission of installments is done in the prescribed format by specified means. Installments transmitted electronically are considered to have been made on the date that the deposit or remittance is added to the bank account designated by the treasurer of the state of Iowa.

This rule is intended to implement Iowa Code section 422.85.

701—56.3(422) Special estimate periods.

56.3(1) *Short taxable year.* A corporation having a taxable year of less than 12 months shall pay estimated tax if anticipating an Iowa tax liability of more than $1,000 for that short taxable year.

a. Short taxable year where a new corporation first commences doing business. In filing the first estimated tax payment, the taxpayer shall state the tax period that the estimated tax payment covers.

(1) If the tax year is three months or less, no estimated tax payment need be made.

(2) If the tax year is greater than three months but not more than four months and the estimated tax payment is required to be made on the last day of the fourth month, the estimated tax shall be paid based upon the taxable income for the first three months.

(3) If the tax year is greater than four months but not more than six months and the first estimated tax payment is required to be made on the last day of the fourth month, the estimated tax shall be paid in two equal installments. The first installment shall be due the last day of the fourth month based on the first three months' taxable income annualized by multiplying the taxable income by the number of months in the tax year and dividing by three. The second installment shall be due the last day of the tax year.

If the first estimated tax payment is required to be made after the fourth month, the estimated tax payment shall be made on the last day of the tax year and the estimated tax shall be paid in one installment based upon the taxable income for the first four months if the tax year ends during the fifth month, or for the first five months if the tax year ends during the sixth month.

(4) If the tax year is greater than four months, but not more than nine months, and the first estimated tax payment is required to be made on the last day of the fourth month, the estimated tax shall be paid in three equal installments. The first installment shall be due the last day of the fourth month based on the first three months' taxable income annualized by multiplying the taxable income by the number of months in the tax year and dividing by three. The second installment shall be due the last day of the sixth month of the tax year. The third installment shall be due the last day of the tax year.

If the first estimated tax payment is required to be made on the last day of the sixth month of the tax year, the estimated tax shall be paid in two equal installments. The first installment shall be due on the last day of the sixth month based upon the first five months' taxable income annualized by multiplying the taxable income by the number of months in the tax year and dividing by five. The second installment shall be due on the last day of the tax year.

If the first estimated tax payment is required to be made after the last day of the sixth month of the tax year, the estimated tax payment shall be made on the last day of the tax year and the estimated tax shall be paid in one installment based on the taxable income for the first seven months if the tax year ends during the eighth month, or for the first eight months if the tax year ends during the ninth month.

(5) If the tax year is greater than four months, but not more than eleven months, and the first estimated tax payment is required to be made on the last day of the fourth month, the estimated tax shall be paid in four equal installments. The first installment shall be due the last day of the fourth month based upon the first three months' income annualized by multiplying the taxable income by the number of months in the tax year and dividing by three. The second installment shall be due on the last day of the sixth month of the tax year. The third installment shall be due on the last day of the ninth month of the tax year. The fourth installment shall be due the last day of the tax year.

If the first estimated tax payment is required to be made on the last day of the sixth month of the tax year, the estimated tax shall be paid in three equal installments. The first installment shall be due on the last day of the sixth month based upon the first five months' taxable income annualized by multiplying the taxable income by the number of months in the tax year and dividing by five. The second installment shall be due the last day of the ninth month of the tax year. The third installment shall be due on the last day of the tax year.

If the first estimated tax payment is required to be made on the last day of the ninth month of the tax year, the estimated tax shall be paid in two equal installments. The first installment shall be due on the last day of the ninth month, based upon the first eight months' taxable income annualized by multiplying the taxable income by the number of months in the tax year and dividing by eight. The second installment shall be due the last day of the tax year.

If the first estimated tax payment is required to be made after the last day of the ninth month of the tax year, the estimated tax payment shall be made on the last day of the tax year and the estimated tax shall be paid in one installment based upon the taxable income for the first nine months if the tax year ends during the tenth month or for the first ten months if the tax year ends during the eleventh month.

(6) If during the tax year, the taxpayer determines that its tax year will be different than the tax year specified in its original payment of estimated tax, the remaining estimated tax payments, if any, shall be based upon the above schedule.

b. Short taxable year where the taxpayer is liquidated during the tax year or where under any provision of the Internal Revenue Code the taxpayer is required to file a return for a period of less than 12 months.

(1) If the tax year is 3 months or less, no estimated tax payment need be made.

(2) If the tax year is greater than 3 months, an estimated tax payment shall be made the same as if the taxpayer's tax year is a full 12 months except that the final installment shall be due the last day of the tax year.

(3) Special exception to penalty. If the taxpayer uses the exception under Iowa Code subsection 422.89(1) to avoid the penalty for underpayment of estimated tax, no penalty will accrue if the following conditions are met: (a) The total amount of all payments of estimated tax made on or before the last date prescribed for the payment of estimated tax equals the prior year's tax multiplied by the number of months in the short tax year and divided by 12, and (b) a return for the preceding tax year of a full 12 months showing a tax liability was filed by the taxpayer.

56.3(2) *Doing business in Iowa less than a full year.*

a. *General rule.* A corporation which commences or ceases to do business in this state during any part of the year shall determine its Iowa estimated tax on that portion of income earned while doing business in this state.

b. *Example.* A corporation which first begins doing business in this state on April 15, under the provisions of Iowa Code section 422.33, and which expects a tax liability of $1500, must make its first payment of estimated tax of $500 by June 30, and pay the remaining balance of $1000 in two equal installments of $500 each by September 30 and December 31 of the tax year.

This rule is intended to implement Iowa Code section 422.92.

701—56.4(422) Reporting forms. Corporations which have paid estimated tax in the prior year will receive by mail a preaddressed reporting form unless requirements for electronic transmission of installments are met. Blank reporting forms are available from the department for those making an estimate for the first time, or when the preaddressed form is misplaced or lost.

This rule is intended to implement Iowa Code section 422.21.

701—56.5(422) Penalties. Failure to file and underpayment of estimated tax.

56.5(1) *Underpayment penalty.*

a. A penalty is imposed for underpayment of the estimated tax by the taxpayer. This underpayment penalty is imposed whether or not there was reasonable cause for the underpayment. The Iowa penalty for underpayment of estimated tax is computed on Form IA 2220.

b. The amount of the underpayment penalty is determined at the statutory rate upon the amount of underpayment of the estimated tax for the period from the date the amount is required to be paid until the last day of the fourth month following the close of the income year, or the date the underpayment is paid, whichever is earlier.

EXAMPLE. A calendar year corporation is required to make four equal estimated payments of $2,500 in the current year to meet the exception to the underpayment of estimated tax penalty. The corporation does not make a first quarter estimated payment which was due on April 30, but makes an estimated payment of $5,000 for the second quarter on June 30. The corporation is subject to the underpayment of estimated tax penalty for the period from April 30 to June 30, when the underpayment was paid.

56.5(2) *Exception to imposition of the underpayment penalty.*

a. *In general.* The underpayment penalty will not be imposed for any underpayment if, on or before the date prescribed for payment, the total amount of all payments made of the estimated tax equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were the least of the following amounts:

(1) The tax shown on the return for the preceding taxable year, provided that the preceding taxable year was a taxable year of 12 months and a return showing a tax liability was filed for such year;

(2) An amount equal to a tax determined on the basis of the tax rates for the taxable year but otherwise on the basis of the facts shown on the return for the preceding taxable year if the taxable year

was a taxable year of 12 months or, if the preceding taxable year was a taxable year of less than 12 months, then by placing the income on an annual basis and the law applicable to the preceding year, in the case of a taxpayer required to file a return for the preceding taxable year; or

(3) An amount equal to 90 percent of the tax determined by placing on an annual basis the net income for the first 3, 5, 6, 8, 9, or 11 months of the taxable year, whichever is applicable. The net income so determined shall be placed on an annual basis by multiplying it by 12, and dividing the resulting amount by the number of months in the taxable year for which the net income was so determined.

b. Statement of exception. If there has been an underpayment of the amount of the estimated tax, and the taxpayer believes that one or more of the exceptions to the penalty precludes the assertion of the underpayment penalty, the taxpayer should attach a statement showing the applicability of any exception upon which the taxpayer relies.

56.5(3) *Exception to imposition of the underpayment penalty for taxable years beginning on or after July 1, 1978, and on or before June 30, 1979.* Rescinded IAB 12/20/95, effective 1/24/96.

56.5(4) *Exception to imposition of the underpayment penalty for taxable years beginning on or after July 1, 1977, and on or before June 30, 1978.* Rescinded IAB 12/20/95, effective 1/24/96.

This rule is intended to implement Iowa Code sections 422.88 as amended by 1995 Iowa Acts, chapter 83, 422.89 and 422.90.

701—56.6(422) Overpayment of estimated tax.

56.6(1) *Refund of overpayment of estimated tax.* Any overpayment of estimated tax, at the taxpayer's election, of $5 or more will be refunded with interest without a claim for refund being filed. If the overpayment is less than $5, it will be refunded only if the taxpayer files a claim for refund within 12 months after the due date of the return.

56.6(2) *Interest on refunds of overpayments of estimated tax.* Interest begins to accrue on the first day of the second calendar month following the date of payment or the date the return was due to be filed, or was filed, whichever is the latest. The rate of interest shall be that set forth in rule 701—10.2(421).

56.6(3) *Credit to next year's tax.* In lieu of claiming a refund, the taxpayer may elect to have the overpayment credited to the next year's tax liability. The election may not be changed after the due date for filing the return considering any extension of time to file. If the taxpayer elects to have the overpayment credited to the next year's tax liability, the overpayment will be credited to the first installment if the overpayment arose on or before the due date of the return. If the overpayment arises after the due date of the return, the overpayment will be credited to the first installment due after the date of payment. The taxpayer may, by a written election included with the filing of the return, elect to have the overpayment credited to a different installment. Revenue Ruling 84-58.

This subrule is effective for tax years beginning on or after January 1, 1984.

56.6(4) *Estimated tax carryforwards and how the carryforward amounts are affected under different circumstances.*

a. Estimated tax carryforward and how the amount of carryover credit is affected by error on return. If a state return is timely filed with an overpayment shown on the return and the overpayment is to be credited to the taxpayer's estimated payments for the following year, the amount credited to estimated payments will be affected by an error on the return. Thus, if the error on the return is corrected and results in a smaller overpayment than was shown when the return was filed, the credit to estimated tax from the return will be reduced accordingly.

EXAMPLE: Corporation X filed its 1994 return on April 20, 1995, showing an overpayment of $400 and a credit to 1995 estimated tax of $400. During processing of the return, it was determined that 50 percent of the federal income tax refund received was subtracted from net income instead of being added to net income. Correction of this error resulted in an overpayment of $200 instead of $400. Thus, the amount credited to the taxpayer's estimated payments for 1995 was $200 instead of the $400 shown on the return form. The department notified Corporation X of the error and advised that only $200 was being credited to the taxpayer's estimated tax for 1995 instead of the $400 shown on the return.

b. Estimated tax credit carryover, the carryforward amount affected by amended return. A taxpayer timely files an original return with an overpayment and with the overpayment credited to the

following year's estimated tax payments. If the taxpayer files an amended return correcting an error on the original return and with a different amount credited to estimated tax than on the original return, the credit amount from the amended return will be credited to estimated tax, if the amended return is filed before the last day of the following tax year. Thus, if an amended return for tax year ending September 30, 1995, is filed by September 30, 1996, the amount shown as a credit to estimated tax from that amended return will be the amount credited to the taxpayer's September 30, 1996, estimated tax instead of the amount credited from the original September 30, 1995, return.

EXAMPLE: Corporation X filed its original September 30, 1995, return on January 15, 1996, with an overpayment of $500 and all of the overpayment credited to its estimated tax for the tax year ending September 30, 1996. Later, in 1996, X determined that it had failed to claim a deduction on the return for depreciation on some business equipment it acquired in tax year ended September 30, 1995. Therefore, X filed an amended Iowa return for tax year ending September 30, 1995, on July 15, 1996, showing an overpayment of $700 and a credit to estimated tax of the same amount. X's amended return was filed on or before September 30, 1996, so the $700 credit to X's estimated tax for tax year ending September 30, 1996, from the amended return was allowed.

Note that if the amended return had not been filed until sometime in October 1996, the credit from X's original return would have been applied to X's estimated payments for tax year ending September 30, 1996. Since the amended return would have been filed too late for purposes of crediting the overpayment to the taxpayer's estimated tax for the next year, the department would issue X a refund of $200 which is the portion of the overpayment from the amended return that had not been credited to estimated tax from the original return for tax year ending September 30, 1995.

c. Estimated tax carryforward and how the amount of carryover credit is affected by state tax liability or other state liability of the taxpayer. A taxpayer who files an Iowa return with an overpayment shown on the return and elects to have the overpayment credited to the taxpayer's estimated tax for the next tax year will not have the overpayment credited to estimated tax, if the taxpayer has tax liabilities or other liabilities with the state that are subject to setoff. Other liabilities with the state that are subject to setoff are those liabilities described in Iowa Code section 8A.504. These liabilities are for district court debts, and any other debts of the taxpayer with a board, commission, department, or other administrative office or unit of the state of Iowa.

EXAMPLE: Corporation Z filed its 1994 Iowa return in April 1995 showing an overpayment of $400 and a credit to 1995 estimated tax of $400. During processing of Corporation Z's 1994 return it was determined that Corporation Z had a liability of $150 from its 1993 Iowa return. Thus, $150 of the 1994 overpayment was offset against the tax liability from the 1993 return. The remaining portion of the 1994 overpayment of $250 was credited to Corporation Z's estimated tax for 1995.

56.6(5) *Accrual of interest on an assessment of additional tax.* If the taxpayer has not elected to have an overpayment credited to an installment other than the first installment, interest shall accrue on an assessment of additional tax as follows. If the overpayment was credited to the first installment, interest on an assessment of additional tax shall accrue from the due date of the return. If the overpayment was credited to an installment due after the overpayment arose, interest shall accrue from the date the return was filed. Interest on that portion of an assessment greater than the overpayment shall accrue from the due date of the return.

If the taxpayer has elected to have an overpayment of estimated tax credited to an installment other than the first, interest shall accrue on any assessment of additional tax up to the amount of the overpayment from the date the return was filed with the department. Interest on any assessment of additional tax greater than the amount of the overpayment shall accrue from the due date of the return, *Avon Products, Inc. v. United States,* 588 F.2d 342 (2nd Cir. 1978), Revenue Ruling 84-58.

This subrule is effective for tax years beginning on or after January 1, 1984.

This rule is intended to implement Iowa Code section 422.91.

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TITLE VII
FRANCHISE

CHAPTER 57
ADMINISTRATION

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

701—57.1(422) Definitions.

57.1(1) When the word *"department"* appears herein, it refers to and is synonymous with the "Iowa Department of Revenue"; the word *"director"* is the "Director of Revenue" or the director's authorized assistants and employees; the word *"tax"* is the "franchise tax on financial institutions"; and the word *"return"* is the "franchise tax return."

The administration of the franchise tax is a responsibility of the department. The department is charged with the administration of the franchise tax, subject always to the rules, regulations and direction of the director.

57.1(2) The term *"financial institution"* as used in division V of Iowa Code chapter 422 and in 701—Chapters 57 to 61 includes an Iowa chartered bank, a nationally chartered bank having its principal office in Iowa, a trust company, a federally chartered savings and loan association, a financial institution chartered by the federal home loan bank board, an association incorporated or authorized to do business under Iowa Code chapter 534 or a production credit association.

Effective June 1, 1989, the term "financial institutions" as used in division V of Iowa Code chapter 422 and in 701—Chapters 57 to 61 includes an Iowa chartered bank, a state bank chartered under the laws of any other state, a nationally chartered bank, a trust company, a federally chartered savings and loan association, a non-Iowa chartered savings bank, a financial institution chartered by the federal home loan bank board, a non-Iowa chartered savings and loan association, an association incorporated or authorized to do business under Iowa Code chapter 534 or a production credit association.

Unincorporated privately held financial institutions are exempt from the franchise tax filing requirements.

57.1(3) The term *"Internal Revenue Code"* means the Internal Revenue Code of 1954 prior to the date of its redesignation as the Internal Revenue Code of 1986 or the Internal Revenue Code of 1986, whichever is applicable.

This rule is intended to implement Iowa Code section 422.61.

701—57.2(422) Statutes of limitation.

57.2(1) *Periods of audit.*

a. The department has three years after a return has been filed or three years after the return became due, including any extensions of time for filing, whichever time is the later, to determine whether any additional tax other than that shown on the return is due and owing. This three-year statute of limitation does not apply in the instances specified below in paragraphs *"b," "c," "d," "e," "f,"* and *"g."*

b. If a taxpayer fails to include in the taxpayer's return such items of gross income as defined in the Internal Revenue Code, as amended, as will under that Code extend the statute of limitations for federal tax purposes to six years, the correct amount of tax due may be determined by the department within six years from the time the return is filed, or within six years after the return became due, including any extension of time for filing, whichever time is the later.

c. If the taxpayer files a false or fraudulent return with intent to evade tax, the correct amount of tax due may be determined by the department at any time after the return has been filed.

d. If a taxpayer fails to file a return, the statutes of limitation so specified in Iowa Code section 422.25 do not begin to run until the return is filed with the department.

e. While the burden of proof of additional tax owing under the six-year period or the unlimited period is upon the department, a prima facie case of omission of income, or of making a false or fraudulent return, shall be made upon a showing of a federal audit of the same income, a determination by federal authorities that the taxpayer omitted items of gross income or made a false or fraudulent return, and the

payment by the taxpayer of the amount claimed by the federal government to be the correct tax or the admission by the taxpayer to the federal government of liability for that amount.

f. In addition to the periods of limitation set forth in paragraph *"a," "b," "c," "d," or "e,"* the department has six months after notification by the taxpayer of the final disposition of any matter between the taxpayer and the Internal Revenue Service with respect to any particular tax year to make an examination and determination. Final disposition of any matter between the taxpayer and the Internal Revenue Service triggers the extension of the statute of limitations for the department to make an examination and determination and the extension runs until six months after the department receives notification and a copy of the federal document showing the final disposition or final federal adjustments from the taxpayer, *Van Dyke v. Iowa Department of Revenue and Finance,* 547 N.W.2d 1. This examination and determination is limited to those matters between the taxpayer and the Internal Revenue Service which affect Iowa taxable income. *Kelly-Springfield Tire Co. v. Iowa State Board of Tax Review,* 414 N.W.2d 113 (Iowa 1987). The notification shall be in writing in any form sufficient to inform the department of final disposition, and attached thereto shall be a photo reproduction or carbon copy of the federal document which shows the final disposition and any schedules necessary to explain the federal adjustments. The notification and copy of the federal document shall be mailed, under separate cover, to the Examination Section, Compliance Division, Iowa Department of Revenue, P.O. Box 10456, Des Moines, Iowa 50306. Any notification and copy of the federal document which is included in, made a part of, or mailed with a current year Iowa franchise tax return will not be considered as proper notification for the purposes of beginning the running of the six-month period.

When a taxpayer's income or loss is included in a consolidated federal corporation income tax return, notification shall include a schedule of adjustments to the taxpayer's income, a copy of the revenue agent's tax computation, a schedule of revised foreign tax credit on a separate company basis if applicable, and a schedule of consolidating income statements after federal adjustments.

g. In lieu of the above periods of limitation for any prior year for which an overpayment of tax or an elimination or reduction of any underpayment of tax due for that prior year results from the carryback to such prior year of a net operating loss or net capital loss, the period shall be the period of limitations for the taxable year of the net operating loss or net capital loss which results in such carryback.

h. The department may, at any time within the period prescribed for assessment or refund adjustment, make a supplemental assessment or refund adjustment whenever it is ascertained that any assessment or refund adjustment is imperfect or incomplete in any respect.

If an assessment or refund adjustment is appealed (protested under rule 701—7.41(17A)) and is resolved whether by informal proceedings or by adjudication, the department and the taxpayer are precluded from making a supplemental assessment or refund adjustment concerning the same issue involved in such appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation. Nothing in this rule shall prevent the making of an assessment or refund adjustment for the purpose of taking into account the impact upon Iowa net income of federal audit adjustments.

57.2(2) *Waiver of statute of limitations.* Rescinded IAB 11/24/04, effective 12/29/04.

57.2(3) *Waiver of statute of limitations.* Waivers entered into on or after July 1, 1989. When the department and the taxpayer enter into an agreement to extend the period of limitation, interest continues to accrue on an assessed deficiency or overpayment during the period of the waiver. The taxpayer may claim a refund during the period of the waiver.

57.2(4) *Amended returns filed within 60 days of the expiration of the statute of limitations for assessment.* If a taxpayer files an amended return on or after April 1, 1995, within 60 days prior to the expiration of the statute of limitations for assessment, the department has 60 days from the date the amended return is received to issue an assessment for applicable tax, interest, or penalty.

This rule is intended to implement Iowa Code sections 422.25 and 422.66.

701—57.3(422) Retention of records.

57.3(1) Every financial institution subject to the tax imposed by Iowa Code section 422.60 (whether or not the financial institution incurs liability for the tax) shall retain its books and records as required by

Section 6001 of the Internal Revenue Code and federal income tax regulation 1.6001-1(e) including the federal schedules required by 701—subrule 58.3(2). For taxpayers using an electronic data interchange process or technology also see 701—subrule 11.4(4).

57.3(2) In addition, records relating to computation of the Iowa apportionment factor, allocable income and other deductions or additions to federal taxable income shall be retained so long as the contents may be material in the administration of the Iowa Code under the statutes of limitation for audit specified in Iowa Code section 422.25.

This rule is intended to implement Iowa Code sections 422.25 and 422.70.

701—57.4(422) Authority for deductions. Whether and to what extent deductions shall be allowed depends upon specific legislative Acts, and only where there is a clear provision can any particular deduction be allowed. Therefore, a deduction will be allowed only if the taxpayer can establish the validity and correctness of such a deduction. *71 Am. Jur. 2d State and Local Taxation, subsection 518 (1973).*

This rule is intended to implement Iowa Code sections 422.35 and 422.61.

701—57.5(422) Jeopardy assessments.

57.5(1) A jeopardy assessment may be made where a return has been filed and the director believes for any reason that collection of the tax will be jeopardized by delay, or where a taxpayer fails to file a return, whether or not formally called upon to file a return. The department is authorized to estimate the income of the taxpayer upon the basis of available information, add penalty and interest, and demand immediate payment.

57.5(2) A jeopardy assessment is due and payable when the notice of the assessment is served upon the taxpayer. Proceedings to enforce the payment of the assessment by seizure or sale of any property of the taxpayer may be instituted immediately.

This rule is intended to implement Iowa Code sections 422.30 and 422.66.

701—57.6(422) Information deemed confidential. Iowa Code section 422.72 applies generally to the director, deputies, auditors, examiners, agents, present or former officers and employees of the department. Disclosure of information from a taxpayer's filed return or report or other confidential state information by department of revenue personnel to a third person is prohibited under Iowa Code section 422.72. See rule 701—6.3(17A).

This rule is intended to implement Iowa Code sections 422.66 and 422.72.

701—57.7(422) Power of attorney. For information regarding power of attorney, see rule 701—7.34(421).

701—57.8(422) Delegation to audit and examine. Pursuant to statutory authority the director delegates to the authorized assistants and employees the power to examine returns and make audits, and to determine the correct amount of tax due, subject to review by or appeal to the director.

This rule is intended to implement Iowa Code sections 422.66 and 422.70.

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CHAPTER 58
FILING RETURNS, PAYMENT OF TAX, PENALTY AND INTEREST, AND ALLOCATION OF TAX REVENUES

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

701—58.1(422) Who must file. Every financial institution as defined in 701—subrule 57.1(2), regardless of net income, shall file a true and accurate return of its income or loss for the taxable period. The return shall be signed by the president or other duly authorized officer. If the financial institution was inactive or not doing business within Iowa, although qualified to do so, during the taxable year, the return must contain a statement to that effect.

58.1(1) *Income tax of financial institutions in liquidation.* When a financial institution is in the process of liquidation, or in the hands of a receiver, the franchise tax returns must be made under oath or affirmation of the persons responsible for the conduct of the affairs of such financial institutions, and must be filed at the same time and in the same manner as required of other financial institutions.

58.1(2) *Franchise tax returns for financial institutions dissolved.* Financial institutions which have been dissolved during the income year must file franchise tax returns for the period prior to dissolution which has not already been covered by previous returns. Officers and directors are responsible for the filing of the returns and for the payment of taxes, if any, for the audit period provided by law.

Where a financial institution dissolves and disposes of its assets without making provision for the payment of its accrued Iowa franchise tax, liability for the tax follows the assets so distributed and upon failure to secure the unpaid amount, suit to collect the tax may be instituted against the stockholders and other persons receiving the property, to the extent of the property received, except bona fide purchasers or others as provided by law.

This rule is intended to implement Iowa Code sections 422.60 and 422.61.

701—58.2(422) Time and place for filing return.

58.2(1) *Returns of financial institutions.* A return of income for all financial institutions must be filed on or before the delinquency date. The delinquency date for all financial institutions is the day following the last day of the fourth month following the close of the taxpayer's taxable year, whether the return is made on the basis of the calendar year or the fiscal year; or the day following the last day of the period covered by an extension of time granted by the director. When the last day prior to the delinquency date falls on a Saturday, Sunday or a legal holiday, the return will be timely if it is filed on the first business day following the Saturday, Sunday or legal holiday. If a return is placed in the mails, properly addressed and postage paid in ample time to reach the department on or before the delinquency date for filing, no penalty will attach should the return not be received until after that date. Mailed returns should be addressed to Franchise Tax Processing, P.O. Box 10413, Des Moines, Iowa 50306.

58.2(2) *Short period returns.* Where under a provision of the Internal Revenue Code, a financial institution is required to file a tax return for a period of less than 12 months, a short period Iowa franchise tax return must be filed for the same period. The delinquency date for the short period return is 45 days after the federal due date not considering any federal extension of time to file.

58.2(3) *Extension of time for filing returns for tax years beginning on or after January 1, 1991.* See 701—subrule 39.2(4).

58.2(4) *Extension of time for filing returns for tax years beginning on or after January 1, 1986.* Rescinded IAB 3/15/95, effective 4/19/95.

This rule is intended to implement Iowa Code sections 422.24, 422.62, and 422.66.

701—58.3(422) Form for filing.

58.3(1) *Use and completeness of prescribed forms.* Returns shall be made by financial institutions on forms supplied by the department. Taxpayers not supplied with the proper forms shall make application for same to the department in ample time to have their returns made, verified and filed on or before the delinquency date. Taxpayers shall carefully prepare their returns so as to fully and clearly set forth the data required. For lack of a prescribed form, a statement made by a taxpayer disclosing the taxpayer's

gross income and the deductions therefrom may be accepted as a tentative return, and if verified and filed within the prescribed time, will relieve the taxpayer from liability to penalties, provided that without unnecessary delay such a tentative return is replaced by a return made on the proper form. Each question shall be answered and each direction complied with in the same manner as if the forms and instructions were embodied in these rules.

Failure to receive the proper forms does not relieve the taxpayer from the obligation of making any return required by the statute.

Returns received which are not completed, but merely state "see schedule attached" are not considered to be a properly filed return and may be returned to the taxpayer for proper completion. This may result in the imposition of penalties and interest due to the return being filed after the due date.

58.3(2) *Form for filing—financial institutions.* Financial institutions as defined by Iowa Code section 422.61(1) shall include a true and accurate copy of their federal corporation income tax return as filed with the Internal Revenue Service with the filing of their Iowa return. At a minimum this return includes the following federal schedules: income statement, balance sheet, reconciliation of income per books with income per return, analysis of unappropriated retained earnings per books, dividend income and special deductions, capital gains, tax computation and tax deposits, work opportunity credit computation, foreign tax credit computation, alternative minimum tax computation, and statements detailing other income and other deductions.

When a financial institution whose income is included in a consolidated federal income tax return files an Iowa return, federal consolidating income statements as properly computed for federal income tax purposes showing the income and expenses of each member of the consolidated group shall be required together with the following additional schedules on a separate basis:

a. Capital gains.
b. Dividend income and special deductions.
c. Work opportunity credit computation.
d. Foreign tax credit computation.
e. Holding company tax computation.
f. Alternative minimum tax computation.
g. Schedules detailing other income and other deductions.

58.3(3) *Amended returns.* If it becomes known to the taxpayer that the amount of income reported to be federal net income or Iowa taxable income subject to franchise tax was erroneously stated on the Iowa return, or changed by Internal Revenue Service audit, or otherwise, the taxpayer shall file an amended Iowa return along with supporting schedules, to include the amended federal return and a copy of the federal revenue agent's report if applicable. A copy of the federal revenue agent's report and notification of final federal adjustments provided by the taxpayer will be acceptable in lieu of an amended return. The assessment or refund of tax shall be dependent on the statute of limitations as set forth in 701—subrule 57.2(1) and rule 701—60.3(422).

This rule is intended to implement Iowa Code sections 422.62, 422.66 and 422.73.

701—58.4(422) Payment of tax.

58.4(1) *Quarterly estimated payments.* Effective for taxable years beginning on or after July 1, 1977, financial institutions are required to make quarterly payments of estimated franchise tax. Rules pertaining to the estimated tax are contained in 701—Chapter 61.

58.4(2) *Full estimated payment prior to original delinquency date.* Rescinded IAB 3/15/95, effective 4/19/95.

58.4(3) *Penalty and interest on unpaid tax.* See rule 701—10.6(421) for penalty for tax periods beginning on or after January 1, 1991. See rule 701—10.8(421) for statutory exemptions to penalty for tax periods beginning on or after January 1, 1991.

Interest shall accrue on tax due from the original due date of the return. Interest on refunds of any portion of the tax imposed by statute which has been erroneously refunded and which is recoverable by the department shall bear interest as provided by law from the date of payment of the refund, with each

fraction of a month considered to be an entire month. See rule 701—10.2(421) for the statutory interest rate.

All payments shall be first applied to the penalty and then to the interest, and the balance, if any, to the amount of tax due.

58.4(4) *Payment of tax by uncertified checks.* The department will accept uncertified checks in payment of franchise taxes, provided such checks are collectible for their full amount without any deduction for exchange or other charges. The date on which the department receives the check will be considered the date of payment, so far as the taxpayer is concerned, unless the check is dishonored. If one check is remitted to cover two or more financial institutions' taxes, the remittance must be accompanied by a letter of transmittal stating:

a. The name of the drawer of the check;

b. The amount of the check;

c. The amount of any cash, money order or other instrument included in the same remittance;

d. The name of each financial institution whose tax is to be paid by the remittance; and

e. The amount of payment on account of each financial institution.

58.4(5) *Procedure with respect to dishonored checks.* If any check is returned unpaid, all expenses incidental to the collection thereof will be charged to the taxpayer. If any taxpayer whose check has been returned by the depository bank uncollected should fail at once to make the check good, the director will proceed to collect the tax as though no check had been given. A taxpayer who tenders a certified check in payment for taxes is not relieved from the taxpayer's obligation until the check has been paid.

This rule is intended to implement Iowa Code chapter 422.

701—58.5(422) Minimum tax.

58.5(1) Rescinded IAB 11/24/04, effective 12/29/04.

58.5(2) For tax years beginning after 1997, a small business corporation or a new corporation, that is a financial institution, for its first year of existence, that through the operation of Internal Revenue Code Section 55(e) is exempt from the federal alternative minimum tax, is not subject to Iowa alternative minimum tax. A small business corporation that is a financial institution may apply any alternative minimum tax credit carryforward to the extent of its regular Iowa franchise tax liability.

For tax years beginning on or after January 1, 1987, the minimum tax is imposed only to the extent that it exceeds the taxpayer's regular tax liability computed under Iowa Code section 422.63. The minimum tax rate is 60 percent of the maximum franchise tax rate rounded to the nearest one-tenth of 1 percent or 3 percent. Minimum taxable income is computed as follows:

	State taxable income as adjusted by Iowa Code sections 422.35 and 422.61(4)
Plus:	Tax preference items, adjustments and losses added back
Less:	Allocable income including allocable preference items
	Subtotal
Times:	Apportionment percentage
	Result
Plus:	Income allocable to Iowa including allocable preference items
Less:	Iowa alternative tax net operating loss deduction $40,000 exemption amount
Equals:	Iowa alternative minimum taxable income

For taxable years beginning on or after January 1, 1987, the items of tax preference are the same items of tax preference under Section 57 except for subsections (a)(1) and (a)(5) of the Internal Revenue Code used to compute federal alternative minimum taxable income. The adjustments to state taxable income are those adjustments required by Section 56 except for subsections (a)(4), (c)(1), (d), and (g) of the Internal Revenue Code used to compute federal alternative minimum taxable income computed without adjustments and the $40,000 exemption. The state alternative tax net operating loss deduction shall be

substituted for the amounts in Section 56(g)(1)(B) of the Internal Revenue Code. For tax years beginning on or after January 1, 1988, in making the adjustment under Section 56(c)(1) of the Internal Revenue Code, interest and dividends from state and other political subdivisions and from regulated investment companies exempt from federal income tax under the Internal Revenue Code shall be subtracted net of amortization of any discount or premium. Losses to be added are those losses required to be added by Section 58 of the Internal Revenue Code in computing federal alternative minimum taxable income.

a. Tax preference items are:

1. Intangible drilling costs;
2. Incentive stock options;
3. Reserves for losses on bad debts of financial institutions;
4. Appreciated property charitable deductions;
5. Accelerated depreciation or amortization on certain property placed in service before January 1, 1987.

b. Adjustments are:

1. Depreciation;
2. Mining exploration and development;
3. Long-term contracts;
4. Iowa alternative minimum net operating loss deduction;
5. Book income or adjusted earnings and profits.

c. Losses added back are:

1. Farm losses;
2. Passive activity losses.

Computation of Iowa alternative minimum tax net operating loss deduction.

Net operating losses computed under rule 701—59.2(422) carried forward from tax years beginning before January 1, 1987, are deductible without adjustment.

Net operating losses from tax years beginning after December 31, 1986, which are carried back or carried forward to the current tax year shall be reduced by the amount of tax preferences and adjustments taken into account in computing the net operating loss prior to applying allocation and apportionment. The deduction for a net operating loss from a tax year beginning after December 31, 1986, which is carried back or carried forward shall not exceed 90 percent of the alternative minimum taxable income computed without regard for the net operating loss deduction.

The exemption amount shall be reduced by 25 percent of the amount that the alternative minimum taxable income computed without regard to the $40,000 exemption exceeds $150,000. The exemption shall not be reduced below zero.

EXAMPLE: The following example shows the computation of the alternative minimum tax when there are net operating loss carryforwards and carrybacks including an alternative minimum tax net operating loss.

For tax year 1987, the following information is available:

Federal taxable income before NOL	$ 35,000
Interest exempt from federal tax	5,000
Tax preferences and adjustments	53,400
Iowa income tax expensed on federal	878
Iowa NOL carryforward	<25,000>

For tax year 1988, the following information is available:

Federal taxable income before NOL	$ <90,000>
Interest exempt from federal tax	4,000
Tax preferences and adjustments	20,000
Iowa franchise tax refund reported on federal	878

The alternative minimum tax for 1987 before the 1988 net operating loss carryback should be computed as follows:

Regular Iowa Tax	
Federal taxable income	$ 35,000
Add interest exempt from federal tax	5,000
Add Iowa franchise tax expensed	878
Iowa taxable income before NOL carryforward	$ 40,878
Less NOL carryforward	<25,000>
Iowa taxable income	$ 15,878
Iowa income tax	$ 794
Alternative Minimum Tax	
Iowa taxable income before NOL	$ 40,878
Add preferences and adjustments	53,400
Total	$ 94,278
Less NOL carryforward*	<25,000>
Iowa alternative taxable income	$ 69,278
Less exemption amount	<40,000>
Total	$ 29,278
Times 3%	878
Less regular tax	794
Alternative minimum tax	$ 84

*Net operating loss carryforwards from tax years beginning before January 1, 1987, are deductible at 100 percent without reduction for items of tax preference or adjustments arising in the tax year.

The alternative minimum tax for 1987 after the 1988 net operating loss carryback should be computed as follows:

Regular Iowa Tax	
Federal taxable income	$ 35,000
Add interest exempt from federal tax	5,000
Add Iowa franchise tax expensed	878
Iowa taxable income before NOL carryforward	$ 40,878
Less NOL carryforward	<25,000>
	$ 15,878
Less NOL carryback from 1988[1]	<86,878>
NOL carryforward	$ <71,000>
Alternative Minimum Tax	
Iowa taxable income before NOL	$ 40,878
Add preferences and adjustments	53,400
Total	$ 94,278
Less NOL carryforward from pre-1987 tax year	<25,000>
Total	$ 69,278
Less alternative minimum tax NOL[2]	<62,350>
Total	$ 6,928
Less exemption	<40,000>
Alternative minimum taxable income after NOL	$ -0-

[1]Computation of 1988 Iowa NOL	
Federal NOL	$ <90,000>
Add interest exempt from federal tax	4,000
Less Iowa refund in federal income	<878>
Iowa NOL	$ <86,878>
[2]Computation of 1988 Alternative Minimum Tax NOL	
Iowa NOL	$ <86,878>
Add preferences and adjustments	20,000
Total	$ <66,878>
NOL carryback limited to 90% of alternative minimum income before NOL and exemption*	$ <62,350>
Alternative minimum tax NOL carryforward	$ 4,528

*For purposes of the alternative minimum tax, net operating loss carryforward or carryback from tax years beginning after December 31, 1986, must be reduced by items of tax preference and adjustments, and are limited to 90 percent of alternative minimum taxable income before deduction of the post-1986 NOL and the $40,000 exemption amount ($69,278 × 90% = $62,350).

58.5(3) Effective for tax years beginning on or after January 1, 1986, estimated payments are required for minimum tax.

58.5(4) Alternative minimum tax credit for minimum tax paid in a prior tax year. Minimum tax paid in prior tax years commencing with tax years beginning on or after January 1, 1987, by a taxpayer can be claimed as a tax credit against the taxpayer's regular income tax liability in a subsequent tax year. Therefore, 1988 is the first tax year that the minimum tax credit is available for use and the credit is based on the minimum tax paid by the taxpayer for 1987. However, only the portion of the minimum tax which is attributable to those adjustments and tax preferences which are "deferral items" qualifies for the minimum tax credit for tax years beginning prior to January 1, 1990. "Deferral items" are those tax preferences and adjustments which result in a temporary change in a taxpayer's tax liability. An example of a "deferral item" is the tax preference for accelerated depreciation of real property placed in service before 1987. On the other hand, the portion of the minimum tax which is attributable to the "exclusion item" for appreciated property charitable deduction does not qualify for the minimum tax credit. The appreciated property charitable deduction tax preference is the only state "exclusion item," although there are several "exclusion items" which are used to compute federal minimum tax. For tax years beginning on or after January 1, 1990, the entire amount of minimum tax paid qualifies for the minimum tax credit, and there is no longer any distinction between "deferral items" and "exclusion items." The minimum tax credit may only be used against regular income tax for a tax year to the extent that the regular tax is greater than the tentative minimum tax for the tax year. If the minimum tax credit is not used up against the regular tax for a tax year the remaining credit is carried to the following tax year to be applied against the regular income tax liability for that period.

a. Computation of minimum tax credit on Form IA 8801C. The minimum tax credit is computed on Form IA 8801C from information on Form IA 4626 for the prior tax year, Form IA 1120 and Form IA 4626 for the current year and from Form IA 8801C for the prior year (applies in 1989 and in subsequent tax years).

Form IA 8801C is in three parts. In the first part, a calculation is made to determine the portion of the minimum tax paid in the prior year, if any, which is attributable to the exclusion item for appreciated property charitable deduction. In the second portion of Form IA 8801C, the minimum tax attributable to the appreciated property charitable deduction from Part I is subtracted from the total minimum tax paid for the prior year. The remaining amount of minimum tax is attributable to the deferral tax preference items and adjustment items. This remaining amount, if any, is added to the minimum tax carryover credit from Form IA 8801C for the prior tax year, if any. This total is compared to the regular income

tax liability less nonrefundable credits, less the tentative minimum tax for the current year and the lesser amount is the allowable minimum tax credit for the current year.

The final part of Form IA 8801C is used to compute the minimum tax credit, if any, which will be carried over to the next tax year. The carryover credit is computed by subtracting the allowable credit for the current tax year from the total of the minimum tax credit attributable to deferral items and the carryover credit from the prior tax years.

b. Example. The taxpayer had a 1989 taxable income of $450,000 and an accelerated depreciation tax preference of $280,000. In 1988 the taxpayer had taxable income of $500,000 and tax preferences of $370,000 which consisted of $320,000 of accelerated property charitable deduction and $50,000 of appreciated property charitable deduction. The minimum tax credit for 1989 was computed on Form IA 8801C using data from Form IA 4626F for 1988 and from Form IA 4626F for 1989 and Form IA 1120 for 1989.

Form IA 8801C

Part I.		Computation of Minimum Tax on Exclusion Items	
Line 11	-	Gross tax on exclusion items	-0-
Line 12	-	Less regular tax minus credits	$33,900
Line 13	-	Net minimum tax on exclusion items	-0-
Part II.		Computation of Allowable Credit for 1989	
Line 14	-	Enter amount from line 18 IA 4626F for 1988	$ 1,100
Line 15	-	Enter amount from line 13 part I	-0-
Line 16	-	Subtract line 15 from line 14	$ 1,100
Line 17	-	Enter credit carryforward from 1987	-0-
Line 18	-	Add lines 16 and 17	$ 1,100
Line 19	-	Enter 1989 regular tax liability	$22,500
Line 20	-	Enter 1989 tentative minimum tax	$21,600
Line 21	-	Subtract line 20 from line 19	$ 900
Line 22	-	Allowable minimum tax credit for 1989. Enter smaller of line 18 or line 21	$ 900
Part III.		Computation of Minimum Tax Credit Carryovers	
Line 23	-	Enter amount from line 18 part II	$ 1,100
Line 24	-	Enter amount from line 22 part II	900
Line 25	-	Carryforward of minimum tax credit to 1990. Subtract line 24 from line 23	$ 200

This rule is intended to implement Iowa Code section 422.60.

701—58.6(422) Refunds and overpayments.

58.6(1) to **58.6(6)** Reserved.

58.6(7) *Computation of interest on refunds resulting from net operating losses or net capital losses for tax years or periods beginning on or after January 1, 1974, and ending after July 1, 1980.* Rescinded IAB 11/24/04, effective 12/29/04.

58.6(8) *Computation of interest on refunds resulting from net operating losses for tax years ending on or after April 30, 1981.* Rescinded IAB 11/24/04, effective 12/29/04.

58.6(9) *For refund claims received by the department after June 11, 1984.* If the amount of tax is reduced as a result of a net operating loss or net capital loss, interest shall accrue on the refund resulting from the loss carryback beginning on the date a claim for refund or amended return carrying back the net operating loss or net capital loss is filed with the department or the first day of the second calendar month following the actual payment date, whichever is later.

58.6(10) *Overpayment—interest accruing before July 1, 1980.* Rescinded IAB 11/24/04, effective 12/29/04.

58.6(11) *Interest commencing on or after January 1, 1982.* See rule 701—10.2(421) regarding the rate of interest charged by the department on delinquent taxes and the rate paid by the department on refunds commencing on or after January 1, 1982.

58.6(12) *Overpayment—interest accruing on or after July 1, 1980, and before April 30, 1981.* Rescinded IAB 11/24/04, effective 12/29/04.

58.6(13) *Overpayment—interest accruing on overpayments resulting from returns due on or after April 30, 1981.* If the amount of tax determined to be due by the department is less than the amount paid, the excess to be refunded will accrue interest from the first day of the second calendar month following the date of payment or the date the return was due to be filed or was filed, whichever is the later.

701—58.7(422) Allocation of franchise tax revenues. For fiscal years prior to July 1, 2004, each quarterly distribution shall be made up of the tax shown due on the franchise tax returns received during that quarter, net of all refunds of franchise tax established during that quarter. In determining the portion of franchise tax revenues to be distributed to cities and counties for fiscal years prior to July 1, 2004, each financial institution, as defined by Iowa Code section 422.61, is required to submit the appropriate allocation data with the filing of its Iowa franchise tax return. Each financial institution shall accumulate or maintain data to properly determine the business activity ratios as prescribed in subrules 58.7(1) and 58.7(2). The allocation shall be made on the basis of business activity for each office location. The word "office" shall mean a branch office, a drive-in bank depository or any other establishment whereby the business pertaining to the financial institution is carried on.

58.7(1) *Business activity determination for a production credit association.* A production credit association shall measure its business activity on the basis of loan volume. "Loan volume" shall mean total loans originated during the taxable period. The business activity for each office location shall be that percentage of loans originated by each office to total loans originated for all office locations during the taxable period.

58.7(2) *Business activity determination for a financial institution other than a production credit association.* A financial institution, other than a production credit association, shall measure its business activity on a basis of net deposits. The business activity of each office shall be that percentage of average "savings and demand deposits net of withdrawals" for each office location to the total average "savings and demand deposits net of withdrawals" for all office locations.

This rule is intended to implement Iowa Code section 422.61.

701—58.8(15E) Eligible housing business tax credit. For tax years beginning on or after January 1, 2000, a financial institution may claim on the franchise tax return the pro-rata share of the Iowa eligible housing business tax credit from a partnership, limited liability company, estate or trust which has been approved as an eligible housing business by the Iowa department of economic development.

An eligible housing business may receive a tax credit of up to 10 percent of the new investment which is directly related to the building or rehabilitating of homes in an enterprise zone. The tax credit may be taken on the tax return for the tax year in which the home is ready for occupancy. The portion of the credit claimed by the taxpayer shall be in the same ratio as the taxpayer's pro-rata share of the earnings of the partnership, limited liability company, estate or trust, except for projects beginning on or after July 1, 2005, which used low-income housing tax credits authorized under Section 42 of the Internal Revenue Code to assist in the financing of the housing development. For these projects, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder. Any eligible housing business tax credit in excess of the franchise tax liability must be carried forward for seven years or until it is used, whichever is the earlier.

Prior to January 1, 2001, the tax credit cannot exceed 10 percent of $120,000 for each home or individual unit in a multiple dwelling unit building. Effective January 1, 2001, the tax credit cannot exceed 10 percent of $140,000 for each home or individual unit in a multiple dwelling unit building.

58.8(1) *Computation of credit.* New investment which is directly related to the building or rehabilitating of homes includes but is not limited to the following costs: land, surveying, architectural services, building permits, inspections, interest on a construction loan, building materials, roofing,

plumbing materials, electrical materials, amounts paid to subcontractors for labor and materials provided, concrete, labor, landscaping, appliances normally provided with a new home, heating and cooling equipment, millwork, drywall and drywall materials, nails, bolts, screws, and floor coverings.

New investment does not include the machinery, equipment, hand or power tools necessary to build or rehabilitate homes.

If the eligible housing business fails to maintain the requirements of Iowa Code section 15E.193B, as amended by 2003 Iowa Acts, Senate File 441, to be an eligible housing business, the taxpayer may be required to repay all or a part of the tax incentives the business received. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the income tax credit may have expired, the department may proceed to collect the tax incentives forfeited by failure to maintain the requirements of Iowa Code section 15E.193B as amended by 2003 Iowa Acts, Senate File 441. This is because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability.

Effective for tax periods beginning on or after January 1, 2003, the taxpayer must receive a tax credit certificate from the Iowa department of economic development to claim the eligible housing business tax credit. The tax credit certificate shall include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the date the project was completed, the amount of the eligible housing business tax credit, and the tax year for which the credit may be claimed. In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 58.8(2). The tax credit certificate must be attached to the income tax return for the tax period in which the home is ready for occupancy. The administrative rules for the eligible housing business tax credit for the Iowa department of economic development may be found under 261—Chapter 59.

58.8(2) *Transfer of the eligible housing business tax credit.* For tax periods beginning on or after January 1, 2003, the eligible housing business tax credit certificates may be transferred to any person or entity if low-income housing tax credits authorized under Section 42 of the Internal Revenue Code are used to assist in the financing of the housing development. In addition, the eligible housing business tax credit certificates may be transferred to any person or entity for projects beginning on or after July 1, 2005, if the housing development is located in a brownfield site as defined in Iowa Code section 15.291, or if the housing development is located in a blighted area as defined in Iowa Code section 403.17. No more than $3 million of tax credits for housing developments located in brownfield sites or blighted areas may be transferred in a calendar year, with no more than $1.5 million being transferred for any one eligible housing business in a calendar year.

Within 90 days of transfer of the tax credit certificate for transfers prior to July 1, 2006, the transferee must submit the transferred tax credit certificate to the Iowa department of economic development, along with a statement which contains the transferee's name, address and tax identification number, and the amount of the tax credit being transferred. For transfers on or after July 1, 2006, the transferee must submit the transferred tax credit certificate to the department of revenue. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee for transfers prior to July 1, 2006, the Iowa department of economic development will issue a replacement tax credit certificate to the transferee. For transfers on or after July 1, 2006, the department of revenue will issue the replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the housing business tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The replacement tax credit certificate must contain the same information that was on the original certificate and must have the same expiration date as the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax period for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes.

Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

This rule is intended to implement Iowa Code Supplement section 15E.193B as amended by 2006 Iowa Acts, chapter 1158.

701—58.9(15E) Eligible development business investment tax credit. Effective for tax years beginning on or after January 1, 2001, a business which qualifies as an eligible development business may receive a tax credit of up to 10 percent of the new investment which is directly related to the construction, expansion or rehabilitation of building space to be used for manufacturing, processing, cold storage, distribution, or office facilities.

An eligible development business must be approved by the Iowa department of economic development prior to March 17, 2004, and meet the qualifications of Iowa Code section 15E.193C. Effective March 17, 2004, the eligible development business program is repealed.

New investment includes the purchase price of land and the cost of improvements made to real property. The tax credit may be claimed by an eligible development business in the tax year in which the construction, expansion or rehabilitation is completed.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until used, whichever is the earlier.

If the business is a partnership, S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

If the eligible development business fails to meet and maintain any one of the requirements to be an eligible business, the business shall be subject to repayment of all or a portion of the amount of tax incentives received. For example, if within five years of project completion the development business sells or leases any space to any retail business, the development business shall proportionally repay the value of the investment credit. The proportion of the investment credit that would be due for repayment by an eligible development business for selling or leasing space to a retail business would be determined by dividing the square footage of building space occupied by the retail business by the square footage of the total building space.

An eligible business, which is not a development business, which operates in an enterprise zone cannot claim an investment tax credit if the property is owned, or was previously owned, by an approved development business that has already received an investment tax credit. An eligible business, which is not a development business, can claim an investment tax credit only on additional, new improvements made to real property that was not included in the development business's approved application for the investment tax credit.

This rule is intended to implement Iowa Code section 15E.193C.

701—58.10(422) Historic preservation and cultural and entertainment district tax credit. For tax years beginning on or after January 1, 2001, a historic preservation and cultural and entertainment district tax credit, subject to the availability of the credit, may be claimed against a taxpayer's Iowa franchise tax liability for 25 percent of the qualified rehabilitation costs to the extent the costs were incurred for the rehabilitation of eligible property in Iowa. For information on those types of property that are eligible for the historic preservation and cultural and entertainment district tax credit, how to file applications for the credit, how the historic preservation and cultural and entertainment district tax credit is computed, how the historic preservation and cultural and entertainment district tax credit can be transferred for tax periods beginning on or after January 1, 2003, and other details about the credit, see rule 701—52.18(422). See also the administrative rules for the historic preservation and cultural and entertainment district tax credit for the historical division of the department of cultural affairs under 223—Chapter 48.

This rule is intended to implement Iowa Code chapter 404A as amended by 2005 Iowa Acts, House File 868, sections 20 through 26, and Iowa Code section 422.60.

701—58.11(15E,422) Venture capital credits.

58.11(1) *Investment tax credit for an equity investment in a community-based seed capital fund or qualifying business.* See rule 123—2.1(15E) for the discussion of the investment tax credit for an equity investment in a community-based seed capital fund or an equity investment made on or after January 1, 2004, in a qualifying business, along with the issuance of tax credit certificates by the Iowa capital investment board.

The department of revenue will be notified by the Iowa capital investment board when the tax credit certificates are issued. The tax credit certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

For equity investments made in a community-based seed capital fund and equity investments made on or after January 1, 2004, in a qualifying business, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

58.11(2) *Investment tax credit for an equity investment in a venture capital fund.* See rule 123—3.1(15E) for the discussion of the investment tax credit for an equity investment in a venture capital fund, along with the issuance of tax credit certificates by the Iowa capital investment board.

The department of revenue will be notified by the Iowa capital investment board when the tax credit certificates are issued. The tax credit certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

For equity investments made in a venture capital fund, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

58.11(3) *Contingent tax credit for investments in Iowa fund of funds.* See rule 123—4.1(15E) for the discussion of the contingent tax credit available for investments made in the Iowa fund of funds organized by the Iowa capital investment corporation. Tax credit certificates related to the contingent tax credits will be issued by the Iowa capital investment board.

The department of revenue will be notified by the Iowa capital investment board when these tax credit certificates are issued and, if applicable, when they are redeemed. If the tax credit certificate is redeemed, the certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

If the tax credit certificate is redeemed, any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until used, whichever is the earlier.

If the tax credit certificate is redeemed, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

This rule is intended to implement Iowa Code section 15E.43 as amended by 2004 Iowa Acts, Senate File 443, and sections 15E.51, 15E.66, 422.11F and 422.60(5).

701—58.12(15) New capital investment program tax credits. Effective for tax periods beginning on or after January 1, 2003, a business which qualifies under the new capital investment program is eligible to receive tax credits. An eligible business under the new capital investment program must be approved by the Iowa department of economic development and meet the qualifications of 2003 Iowa

Acts, chapter 125, section 4. The new capital investment program was repealed on July 1, 2005, and has been replaced with the high quality job creation program. See rules 701—52.28(15) and 701—58.17(15) for information on the tax credits available under the high quality job creation program. Any tax credits earned by businesses approved under the new capital investment program prior to July 1, 2005, remain valid, and can be claimed on tax returns filed after July 1, 2005.

This rule is intended to implement 2003 Iowa Acts, House File 677, sections 1 to 7, and Iowa Code section 15.333 as amended by 2003 Iowa Acts, House File 677, section 8.

701—58.13(15E) Endow Iowa tax credit. Effective for tax years beginning on or after January 1, 2003, a taxpayer who makes an endowment gift to an endow Iowa qualified community foundation may qualify for an endow Iowa tax credit, subject to the availability of the credit. The credit is equal to 20 percent of a taxpayer's endowment gift to an endow Iowa qualified community foundation approved by the Iowa department of economic development. The administrative rules for the endow Iowa tax credit for the Iowa department of economic development may be found under 261—Chapter 47.

The total amount of endow Iowa tax credits available is $2 million in the aggregate for the 2003 and 2004 calendar years. The total amount of endow Iowa tax credits is $2 million annually for the 2005-2007 calendar years, and $200,000 of these tax credits on an annual basis is reserved for endowment gifts of $30,000 or less. The maximum amount of tax credit granted to a single taxpayer shall not exceed $100,000 for the 2003-2007 calendar years. The total amount of endow Iowa tax credits annually for 2008 and subsequent calendar years is $2 million plus a percentage of the tax imposed on the adjusted gross receipts from gambling games in accordance with Iowa Code section 99F.11(3). The maximum amount of tax credit granted to a single taxpayer shall not exceed 5 percent of the total endow Iowa tax credit amount authorized for 2008 and subsequent years. The endow Iowa tax credit cannot be transferred to any other taxpayer.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

If a taxpayer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code Supplement section 15E.305 as amended by 2006 Iowa Acts, chapter 1151, and Iowa Code section 422.60.

701—58.14(15I,422) Wage-benefits tax credit. Effective for tax years ending on or after June 9, 2006, a wage-benefits tax credit, subject to the availability of the credit, equal to a percentage of the annual wages and benefits paid for a qualified new job created by the location or expansion of the business in Iowa is available for eligible financial institutions. For information on the eligibility for the wage-benefits tax credit, how to file applications for the wage-benefits tax credit, how the wage-benefits tax credit is computed, the repeal of the wage-benefits credit effective July 1, 2008, and other details about the credit, see rule 701—52.25(15I,422).

This rule is intended to implement Iowa Code chapter 15I as amended by 2008 Iowa Acts, House File 2700, section 167, and Iowa Code Supplement section 422.60(10) as amended by 2008 Iowa Acts, House File 2700, section 164.

701—58.15(422,476B) Wind energy production tax credit. Effective for tax years beginning on or after July 1, 2006, owners of qualified wind energy production facilities approved by the Iowa utilities board may claim a wind energy production tax credit for qualified electricity sold by the owner against a taxpayer's Iowa franchise tax liability. For information on the application and review process for the wind energy production tax credit, how the wind energy production tax credit is computed, how the wind energy production tax credit can be transferred and other details about the credit, see rule

701—52.26(422,476B). See also the administrative rules for the wind energy production tax credit for the Iowa utilities board in rules 199—15.18(476B) and 199—15.20(476B).

This rule is intended to implement Iowa Code section 422.60 and chapter 476B.

701—58.16(422,476C) Renewable energy tax credit. Effective for tax years beginning on or after July 1, 2006, a purchaser or producer of renewable energy whose facility has been approved by the Iowa utilities board may claim a renewable energy tax credit for qualified renewable energy against a taxpayer's Iowa franchise tax liability. For information on the application and review process for the renewable energy tax credit, how the renewable energy tax credit is computed, how the renewable energy tax credit can be transferred and other details about the credit, see rule 701—52.27(422,476C). See also the administrative rules for the renewable energy tax credit for the Iowa utilities board in rules 199—15.19(476C) and 199—15.21(476C).

This rule is intended to implement Iowa Code section 422.60 and chapter 476C.

701—58.17(15) High quality job creation program. Effective for tax periods ending on or after July 1, 2005, a business which qualifies under the high quality job creation program is eligible to receive tax credits. The high quality job creation program replaces the new jobs and income program and the new capital investment program. An eligible business under the high quality job creation program must be approved by the Iowa department of economic development and meet the qualifications of Iowa Code Supplement section 15.329. The administrative rules for the high quality job creation program for the Iowa department of economic development may be found at 261—Chapter 68.

For information on what credits can be taken under this program, how the investment tax credit is computed and other details about this program, see rule 701—52.28(15). However, the research credit described in subrule 52.28(1) is not available for franchise tax filers.

This rule is intended to implement Iowa Code Supplement chapter 15.

701—58.18(15E,422) Economic development region revolving fund tax credit. Effective for tax years ending on or after July 1, 2005, a taxpayer who makes a contribution to an economic development region revolving fund may claim a tax credit, subject to the availability of the credit. The credit is equal to 20 percent of a taxpayer's contribution to the economic development region revolving fund approved by the Iowa department of economic development. The administrative rules for the economic development region revolving fund tax credit for the Iowa department of economic development may be found at 261—Chapter 32.

The total amount of economic development region revolving fund tax credits available shall not exceed $2 million per fiscal year. The tax credit shall not be carried back to a tax year prior to the year in which the taxpayer redeems the credit. The economic development region revolving fund tax credit is not transferable to any other taxpayer.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following ten years or until used, whichever is the earlier.

This rule is intended to implement Iowa Code Supplement sections 15E.232 and 422.60.

701—58.19(15,422) Film qualified expenditure tax credit. Effective for tax years beginning on or after January 1, 2007, a film qualified expenditure tax credit is available for franchise tax. The tax credit is equal to 25 percent of the taxpayer's qualified expenditures in a film, television, or video project registered with the film office of the Iowa department of economic development (IDED). For information on the qualified expenditures eligible for the credit, how the film qualified expenditure tax credit is claimed, how the film qualified expenditure tax credit can be transferred and other details about the credit, see rule 701—52.34(15,422). See also the administrative rules for the film qualified expenditure tax credit for IDED at 261—Chapter 36.

This rule is intended to implement 2007 Iowa Acts, House File 892, section 3, and Iowa Code section 422.60 as amended by 2007 Iowa Acts, House File 892, section 9.

701—58.20(15,422) Film investment tax credit. Effective for tax years beginning on or after January 1, 2007, a film investment tax credit is available for franchise tax. The tax credit is equal to 25 percent of the taxpayer's qualified expenditures in a film, television, or video project registered with the film office of the Iowa department of economic development (IDED). For information on how the film investment tax credit is claimed, how the film investment tax credit can be transferred and other details about the credit, see rule 701—52.35(15,422). See also the administrative rules for the film investment tax credit for IDED at 261—Chapter 36.

This rule is intended to implement 2007 Iowa Acts, House File 892, section 3, and Iowa Code section 422.60 as amended by 2007 Iowa Acts, House File 892, section 9.

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◊ Two or more ARCs

CHAPTER 59
DETERMINATION OF NET INCOME
[Prior to 12/17/86, Revenue Department[730]]

701—59.1(422) Computation of net income for financial institutions. "Net income" for state purposes shall mean federal taxable income, before deduction for net operating losses, as properly computed under the Internal Revenue Code, and shall include the adjustments in rules 59.2(422) to 59.13(422). The remaining provisions of this rule and rules 59.14(422) to 59.24(422) shall also be applicable in determining net income.

In the case of a financial institution which is a member of an affiliated group of corporations filing a consolidated income tax return for the taxable year for federal income tax purposes, but files a separate return for state purposes, taxable income as properly computed for federal purposes is determined as if the financial institution had filed a separate return for federal income tax purposes for the taxable year and each preceding taxable year for which it was a member of an affiliated group. For purposes of this paragraph, the taxpayer's separate taxable income shall be determined as if the election provided by Section 243(b)(2) of the Internal Revenue Code had been in effect for all those years.

When a federal short period return is filed and the federal taxable income is required to be adjusted to an annual basis, the Iowa taxable income shall also be adjusted to an annual basis. The tax liability for a short period is computed by multiplying the taxable income for the short period by 12 and dividing the result by the number of months in the short period. The tax is determined on the resulting total as if it were the taxable income, and the tax computed is divided by 12 and multiplied by the number of months in the short period. This adjustment shall apply only to income attributable to business carried on within the state of Iowa.

This rule is intended to implement Iowa Code section 422.35.

701—59.2(422) Net operating loss carrybacks and carryovers. Net operating losses shall be allowed or allowable for Iowa franchise tax purposes to the same extent they are allowed or allowable for federal corporation income tax purposes, provided the following adjustments are made:

59.2(1) Additions to income.

a. Refunds of federal income taxes due to net operating loss, capital loss and investment credit or other credit carrybacks shall not be added for tax years beginning on or after January 1, 1980.

b. Iowa franchise tax deducted on the federal return for the loss year shall be reflected as an addition to income in the year of the loss.

c. Interest and dividends received in the year of the loss on federally tax-exempt securities shall be reflected as additions to income in the year of the loss.

59.2(2) Reductions of income. Iowa franchise tax refunds reported as income for federal income tax purposes in the loss year shall be reflected as reductions of income in the year of the loss.

59.2(3) If a financial institution does business both within and without Iowa, it shall make adjustments reflecting the apportionment and allocation of its operating loss on the basis of business done within and without the state of Iowa after completing the provisions of subrules 59.2(1) and 59.2(2).

a. After making the adjustments to federal taxable income as provided in subrules 59.2(1) and 59.2(2), the total net allocable income or loss shall be added to or deducted from, as the case may be, the net federal income or loss as adjusted for Iowa tax purposes. The resulting income or loss so determined shall be subject to apportionment as provided in rules 701—59.25(422) to 701—59.29(422). The apportioned income or loss shall be added or deducted, as the case may be, to the amount of net allocable income or loss properly attributable to Iowa. This amount is the taxable income or net operating loss attributable to Iowa for that year.

b. The net operating loss attributable to Iowa, as determined in rule 701—59.2(422), shall be subject to a 3-year carryback and a 15-year carryover provision. This loss shall be carried back or over to the applicable year as a reduction or part of a reduction of the net income attributable to Iowa for that year. However, an Iowa net operating loss shall not be carried back to a year in which the taxpayer was

not doing business in Iowa. If the election under Section 172(b)(3) of the Internal Revenue Code is made, the Iowa net operating loss shall be carried forward 15 taxable years. A copy of the federal election made under Section 172(b)(3) of the Internal Revenue Code must be attached to the Iowa corporation income tax return filed with the department.

c. For tax years beginning after August 5, 1997, a net operating loss attributable to Iowa, as determined in rule 701—59.2(422), incurred in a presidentially declared disaster area by a corporation engaged in a small business or in the trade or business of farming must be carried back 3 taxable years and carried forward 20 taxable years. All other net operating losses attributable to Iowa must be carried back 2 taxable years and carried forward 20 taxable years. This loss shall be carried back or over to the applicable year as a reduction or part of a reduction of the net income attributable to Iowa for that year. However, an Iowa net operating loss shall not be carried back to a year in which the taxpayer was not doing business in Iowa. If the election under Section 172(b)(3) of the Internal Revenue Code is made, the Iowa net operating loss shall be carried forward 20 taxable years. A copy of the federal election made under Section 172(b)(3) of the Internal Revenue Code must be attached to the Iowa franchise tax return filed with the department.

59.2(4) No part of a net loss for a year for which the financial institution was not subject to the imposition of Iowa franchise tax shall be included in the Iowa net operating loss deduction applicable to any year prior to or subsequent to the year of the loss.

59.2(5) No part of a net operating loss may be carried back or carried forward if the carryback or carryforward would be disallowed for federal income tax purposes under Sections 172(b)(1)(E) and 172(h) of the Internal Revenue Code. This provision is effective for tax years beginning on or after January 1, 1989.

59.2(6) The carryover of Iowa net operating losses after reorganizations or mergers is limited to the same extent as the carryover of a net operating loss is limited under the provisions of Sections 381 through 386 of the Internal Revenue Code and regulations thereunder or any other section of the Internal Revenue Code or regulations thereunder. Where the taxpayer files as a member of a consolidated income tax return for federal income tax purposes, but is required to file a separate franchise tax return, the limitation on an Iowa net operating loss carryover must be determined as though a separate income tax return was filed for federal income tax purposes.

This rule is intended to implement Iowa Code sections 422.35 as amended by 1998 Iowa Acts, Senate File 2357, 422.61, and 422.63.

701—59.3(422) Capital loss carryback. Capital losses shall be allowed or allowable for Iowa franchise tax purposes to the same extent they are allowed or allowable for federal corporation income tax purposes. Capital loss carrybacks shall be treated as an adjustment to federal taxable income to arrive at net income. For capital losses occurring in tax years beginning on or after January 1, 1980, refunds of federal corporation income taxes shall not be an adjustment in computing income subject to the franchise tax.

This rule is intended to implement Iowa Code sections 422.35 and 422.61.

701—59.4(422) Net operating and capital loss carrybacks and carryovers. If the taxpayer has both a net operating loss and a capital loss carryback to a prior tax year, the capital loss shall be carried back first and then the net operating loss offset against any remaining income.

This rule is intended to implement Iowa Code sections 422.35 and 422.61.

701—59.5(422) Interest and dividends from federal securities. For franchise tax purposes, dividends received from corporations owned or sponsored by the federal government, or interest derived from obligations of the United States and its possessions, agencies and instrumentalities become a part of the taxable income. Examples of these types of obligations are bonds issued by the governments of Puerto Rico, Washington D.C., Guam and the Virgin Islands. Notwithstanding the above, only interest received after July 1, 1991, from bonds purchased after January 1, 1991, issued by the governments of Puerto Rico, Guam and the Virgin Islands is subject to tax.

Gains or losses from the sale or other disposition of any bonds shall be taxable for state franchise tax purposes.

Interest received on federal tax refunds is taxable for Iowa franchise tax purposes.

This rule is intended to implement Iowa Code section 422.61.

701—59.6(422) Interest and dividends from foreign securities and securities of states and other political subdivisions. Interest and dividends from foreign securities and securities of states and their political subdivisions including Iowa shall be included in taxable income for periods beginning on or after January 1, 1980. For tax periods beginning on or after January 1, 1987, subtract interest expense allocable to interest exempt from federal income tax which was disallowed as a deduction under Internal Revenue Code Section 265(b) or 291(e)(1)(B).

For tax years beginning on or after January 1, 1987, add dividends received from regulated investment companies exempt from federal income tax under Section 852(b)(5) of the Internal Revenue Code and subtract the loss on the sale or exchange of a share of a regulated investment company held for six months or less to the extent the loss was disallowed under Section 852(b)(4)(B) of the Internal Revenue Code.

For tax years beginning on or after January 1, 2001, add, to the extent not already included, income from the sale of obligations of the state of Iowa and its political subdivisions and interest and dividend income from these obligations. Gains or losses from the sale or other disposition of bonds issued by the state of Iowa or its political subdivisions, along with interest and dividend income from these bonds, shall be included in Iowa taxable income unless the law authorizing these obligations specifically exempts the income from the sale and interest and dividend income from Iowa franchise tax.

This rule is intended to implement Iowa Code sections 422.35 and 422.61 as amended by 2001 Iowa Acts, House File 715.

701—59.7(422) Safe harbor leases. For tax years ending after January 1, 1981, deductions in determining federal taxable income for sale-leaseback agreements taken as a result of the application of Section 168(f)(8) of the Internal Revenue Code shall be added in determining Iowa taxable income to the extent such deductions cannot be taken under provisions of Sections 162, 163 and 167 of the Internal Revenue Code. The lessor shall add depreciation and interest expense, and the lessee shall add rental expense. When the deduction for depreciation is not allowed under a previous provision of this rule, the lessee shall be allowed a deduction for depreciation on any property involved in a sale-leaseback agreement. The depreciation shall be computed in accordance with Section 168(a) of the Internal Revenue Code. Income received as a result of sale-leaseback agreement shall be deducted in determining Iowa taxable income. The lessee shall deduct interest income and the lessor shall deduct rent income. Each lessor and lessee corporation shall include a copy of federal Form 6793 in its Iowa franchise tax return for the year in which a safe harbor lease is entered into.

This rule is intended to implement Iowa Code sections 422.35 and 422.61.

701—59.8(422) Additional deduction for wages paid or accrued for work done in Iowa by certain individuals. For tax years beginning on or after January 1, 1984, a taxpayer which is considered to be a small business corporation, as defined by subrule 59.8(2), is allowed a deduction for 50 percent of the first 12 months of wages paid or accrued during the tax years for work done in Iowa for employees first hired on or after January 1, 1984.

A handicapped individual domiciled in this state at the time of hiring.

An individual domiciled in this state at the time of hiring who meets any of the following conditions:

1. Has been convicted of a felony in this or any other state or the District of Columbia.
2. Is on parole pursuant to Iowa Code chapter 906.
3. Is on probation pursuant to Iowa Code chapter 907 for an offense other than a simple misdemeanor.
4. Is in a work release program pursuant to Iowa Code chapter 904, division IX.

An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under Iowa Code section 907A.1 applies.

For tax years beginning on or after January 1, 1989, a taxpayer which is considered to be a small business corporation, as defined by 701—subrule 53.11(2), is allowed a deduction for 65 percent not to exceed $20,000 of the 12 months of wages paid or accrued during the tax year for work done in Iowa for employees first hired after January 1, 1989, who meet the above criteria.

59.8(1) The additional deduction shall not be allowed for wages paid to an individual who was hired to replace an individual whose employment was terminated within the 12-month period preceding the date of first employment. However, if the individual being replaced left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct in connection with the individual's employment as determined by the division of job service of the department of employment services, the additional deduction shall be allowed.

The determination of whether an individual left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct is a factual determination which must be made on a case-by-case basis.

59.8(2) The term "small business corporation" includes the operation of a farm but does not include the practice of a profession. The following conditions apply for the purpose of determining what constitutes a small business corporation.

a. A small business corporation shall not have had more than 20 full-time equivalent positions during each of the 26 consecutive weeks within the 52-week period immediately preceding the date on which the individual for whom an additional deduction for wages is taken was hired. "Full-time equivalent position" means any of the following:

1. An employment position requiring an average work week of 40 or more hours;
2. An employment position for which compensation is paid on a salaried full-time basis without regard to hours worked; or
3. An aggregation of any number of part-time positions which equal one full-time position. For purposes of this subrule each part-time position shall be categorized with regard to the average number of hours worked each week as a one-quarter, half, three-quarter, or full-time position, as set forth in the following table:

Average Number of Weekly Hours	Category
More than 0 but less than 15	¼
15 or more but less than 25	½
25 or more but less than 35	¾
35 or more	1 (full-time)

b. A small business corporation shall not have more than $1 million in annual gross revenues or after July 1, 1984, $3 million in annual gross revenues or as the average of the three preceding tax years. "Annual gross revenues" means total interest received from loans and investments, service charges, management fees, fiduciary fees, commissions, and gross proceeds from the sale of securities held as investments as determined in accordance with generally accepted accounting principles.

c. A small business corporation shall not be an affiliate or subsidiary of a business which is dominant in its field of operation. "Dominant in its field of operation" means having more than 20 full-time equivalent employees and more than $1 million of annual gross revenues, or after July 1, 1984, $3 million of annual gross revenues or as the average of the three preceding tax years. "Affiliate or subsidiary of a business dominant in its field of operations" means a business which is at least 20 percent owned by a business dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalent, of a business dominant in that field of operation.

d. "Operation of a farm" means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing or the production of livestock. Operation of a farm shall not include the

production of timber, forest products, nursery products, or sod and operation of a farm shall not include a contract where a processor or distributor of farm products or supplies provides spraying, harvesting or other farm services.

e. "The practice of a profession" means a vocation requiring specialized knowledge and preparation including but not limited to the following: medicine and surgery, podiatry, osteopathy, osteopathic medicine and surgery, psychology, psychiatry, chiropractic, nursing, dentistry, dental hygiene, optometry, speech pathology, audiology, pharmacy, physical therapy, occupational therapy, mortuary science, law, architecture, engineering and surveying, and accounting.

59.8(3) Definitions.

a. The term *"handicapped person"* means any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment.

The term *"handicapped"* does not include any person who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the person from performing the duties of employment or whose employment, by reason of current use of alcohol or drugs, would constitute a direct threat to the property or the safety of others.

b. The term *"physical or mental impairment"* means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

c. The term *"major life activities"* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

d. The term *"has a record of such impairment"* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

e. The term *"is regarded as having such an impairment"* means:

1. Has a physical or mental impairment that does not substantially limit major life activities but that is perceived as constituting such a limitation;

2. Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

3. Has none of the impairments defined as physical or mental impairments, but is perceived as having such an impairment.

f. The term *"successfully completing a probationary period"* includes those instances where the employee quits without good cause attributable to the employer during the probationary period or was discharged for misconduct during the probationary period.

g. The term *"probationary period"* means the period of probation for newly hired employees, if the employer has a written probationary policy. If the employer has no written probationary policy for newly hired employees, the probationary period shall be considered to be six months from the date of hire.

59.8(4) If a newly hired employee has been certified as either a vocational rehabilitation referral or an economically disadvantaged ex-convict for purposes of qualification for the targeted jobs tax credit under Section 59 of the Internal Revenue Code, that employee shall be considered to have met the qualifications for the additional wage deduction.

A "vocational rehabilitation referral" is any individual certified by a state employment agency as having a physical or mental disability which, for the individual, constitutes or results in a substantial handicap to employment. In addition, the individual must have been referred to the employer after completion or while receiving rehabilitation services pursuant to either a state- or federal-approved vocational rehabilitation program.

For all other newly hired employees, the employer has the burden of proof to show that the employees meet the qualifications for the additional wage deduction.

59.8(5) The taxpayer shall include a schedule with the filing of the taxpayer's tax return showing the name, address, social security number, date of hiring and wages paid of each employee for whom the taxpayer claims the additional deduction for wages.

59.8(6) If the employee for whom an additional deduction for wages was allowed fails to successfully complete a probationary period and the taxpayer has already filed an Iowa corporation income tax return taking the additional deduction for wages, the taxpayer shall file an amended return adding back the additional deduction for wages. The amended return shall state the name and social security number of the employee who failed to successfully complete a probationary period.

59.8(7) For tax years ending after July 1, 1990, a taxpayer who did not qualify for the additional deduction for wages paid or accrued for work done in Iowa by certain individuals set forth above is allowed an additional deduction of 65 percent not to exceed $20,000 of the first 12 months of wages paid or accrued for work done in Iowa for employees first hired on or after July 1, 1990, if the new employee is:

a. An individual domiciled in this state at the time of the hiring who meets any of the following conditions:

(1) Has been convicted of a felony in this or any other state or the District of Columbia.

(2) Is on parole pursuant to Iowa Code chapter 906.

(3) Is on probation pursuant to Iowa Code chapter 907, for an offense other than a simple misdemeanor.

(4) Is in a work release program pursuant to Iowa Code chapter 904, division IX.

b. An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under Iowa Code section 907A.1 applies.

The additional deduction is not allowed for wages paid to an individual who was hired to replace an individual whose employment was terminated within the 12-month period preceding the date of first employment. However, if the individual being replaced left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct in connection with the individual's employment as determined by the Iowa division of job service of the department of employment services, the additional deduction is allowed.

The taxpayer must include a schedule with the filing of the taxpayer's tax return showing the name, address, social security number, date of hiring, and wages paid of each employee for whom the taxpayer claims the additional deduction for wages.

The determination of whether an individual left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct is a factual determination which must be made on a case-by-case basis.

If the employee for which an additional deduction for wages was allowed fails to successfully complete a probationary period and the taxpayer has already filed an Iowa franchise tax return taking the additional deduction for wages, the taxpayer must file an amended return adding back the additional deduction for wages. The amended return must state the name and social security number of the employee who failed to successfully complete a probationary period.

This rule is intended to implement Iowa Code sections 16.1(36), 422.35 and 422.61.

701—59.9(422) Work opportunity tax credit. Where a financial institution claims the federal work opportunity tax credit as provided in Section 51 of the Internal Revenue Code, the amount of credit allowable shall be a deduction from Iowa taxable income to the extent the credit increased federal taxable income.

This rule is intended to implement Iowa Code sections 422.35 and 422.61.

701—59.10(422) Work incentive program credit. Rescinded IAB 3/15/95, effective 4/19/95.

701—59.11(422) Gains and losses on property acquired before January 1, 1934. Where property was acquired prior to January 1, 1934, the basis as of January 1, 1934, for determining capital or other

gains or losses is the higher of cost, adjusted for depreciation allowed or allowable to January 1, 1934, or fair market value as of that date. *City National Bank of Clinton v. Iowa State Tax Commission,* 251 Iowa 603, 102 N.W.2d 381 (1960).

If as a result of this provision a basis is to be used for purposes of Iowa franchise tax which is different from the basis used for purposes of federal income tax, an appropriate adjustment must be made and detailed schedules supplied in the computation of Iowa income subject to franchise tax.

This rule is intended to implement Iowa Code sections 422.35 and 422.61.

701—59.12(422) Federal income tax deduction. For tax years beginning on or after January 1, 1980, a deduction for 50 percent of federal income taxes paid or accrued is not allowed. Cash-basis taxpayers are not allowed a deduction for 50 percent of federal income taxes paid during a tax year beginning on or after January 1, 1980, which represent the preceding year's tax or additional taxes for prior years. Fifty percent of a federal income tax refund received during a tax year beginning on or after January 1, 1980, shall not be reported as income. For tax years beginning on or after January 1, 1990, because the federal environmental tax is deducted in computing federal taxable income and Iowa Code section 422.61(3)*"a"* does not allow the deduction of federal income taxes, the federal environmental tax must be added to federal taxable income.

This rule is intended to implement Iowa Code sections 422.35 and 422.61.

701—59.13(422) Iowa franchise taxes. Iowa franchise taxes paid or accrued during the tax year as may be applicable under the method of filing are permissible deductions for federal corporation income tax purposes, but not for purposes of determining Iowa net income. To the extent taxes were deducted in the determination of federal taxable income, they shall be added to federal taxable income for Iowa franchise tax purposes. Refunds of Iowa franchise tax to the extent that the returns are included in the determination of federal taxable income shall all be subtracted from federal taxable income.

This rule is intended to implement Iowa Code section 422.61.

701—59.14(422) Method of accounting, accounting period. The return shall be computed on the same basis and for the same accounting period as the taxpayer's return for federal corporation income tax purposes. Permission to change accounting methods or accounting periods for franchise tax purposes is not required provided the taxpayer furnishes the department with a copy of the federal consent.

This rule is intended to implement Iowa Code sections 422.35 and 422.61.

701—59.15(422) Consolidated returns. There is no provision in the Iowa franchise tax law to allow financial institutions to file consolidated Iowa franchise tax returns with another financial institution or another corporation as defined in Iowa Code section 422.32. In the absence of any statutory authority for allowing consolidated Iowa franchise tax returns, separate Iowa franchise tax returns must be filed.

This rule is intended to implement Iowa Code sections 421.14 and 422.68(1).

701—59.16(422) Federal rulings and regulations. In determining whether "taxable income," "net operating loss deduction" or any other deductions are computed for federal tax purposes under, or have the same meaning as provided by, the Internal Revenue Code, the department will use applicable rulings and regulations that have been duly promulgated by the Commissioner of Internal Revenue, unless the director has created rules and regulations or has exercised discretionary powers as prescribed by statute which call for an alternative method for determining "taxable income," "net operating loss deduction," or any other deductions, or unless the department finds that an applicable Internal Revenue ruling or regulation is unauthorized according to the Iowa Code.

This rule is intended to implement Iowa Code sections 422.35 and 422.61.

701—59.17(422) Disallowance of private club expenses. Rescinded IAB 11/24/04, effective 12/29/04.

701—59.18(422) Depreciation of speculative shell buildings.

59.18(1) For tax years beginning on or after July 1, 1992, speculative shell buildings constructed or reconstructed after that date may be depreciated as 15-year property under the accelerated cost of recovery system of the Internal Revenue Code. If the taxpayer has deducted depreciation on the speculative shell building on the taxpayer's federal income tax return, that amount of depreciation must be added to federal taxable income in order to deduct depreciation under this rule.

59.18(2) On sale or other disposition of the speculative shell building, the taxpayer must report on the taxpayer's Iowa corporation income tax return the same gain or loss reported on the taxpayer's federal corporation income tax return. If, while owned by the taxpayer, the building is converted from a speculative shell building to another use, the taxpayer must deduct the same amount of depreciation on the taxpayer's Iowa tax return as is deducted on the taxpayer's federal tax return.

59.18(3) For the purposes of this rule, the term "speculative shell building" means a building as defined in Iowa Code section 427.1, subsection (27)*"c."*

This rule is intended to implement Iowa Code sections 422.35 and 422.63.

701—59.19(422) Deduction of multipurpose vehicle registration fee. For tax years beginning on or after January 1, 1992, and before January 1, 2005, corporations may claim a deduction for 60 percent of the amount of the registration fee paid for a multipurpose vehicle under Iowa Code section 321.124, subsection 3, paragraph *"h."* In order to qualify for this deduction, no part of the multipurpose vehicle registration fee may have been deducted as an ordinary and necessary business expense.

For tax years beginning on or after January 1, 2005, the deduction for Iowa franchise tax for multipurpose vehicle registration fees is the same as allowed under Section 164 of the Internal Revenue Code for federal tax purposes.

This rule is intended to implement Iowa Code section 422.35.

701—59.20(422) Disallowance of expenses to carry an investment subsidiary for tax years which begin on or after January 1, 1995. A financial institution which has an investment in an investment subsidiary on or after July 1, 1995, must allocate a portion of its total expenses used in computing its federal taxable income on a separate return basis to its investment subsidiary. The expenses which are allocable to the investment in an investment subsidiary are computed by multiplying the financial institution's total expenses used in computing its federal taxable income on a separate return basis by the ratio of the average adjusted basis in its investment subsidiary to the average adjusted basis for all assets of the financial institution. For tax years beginning on or after January 1, 1995, and before December 31, 1995, a financial institution which has an investment in an investment subsidiary on July 1, 1995, must allocate a portion of its total expenses for the entire tax year to its investment in an investment subsidiary even though it did not have an investment in an investment subsidiary for the entire tax year.

A calculation of the average for the tax year of the adjusted bases of a financial institution's investment in investment subsidiaries, and total assets, held each day of the tax year is the most accurate method for determining under Iowa Code subsection 422.61(3) the portion of a financial institution's total expenses that is allocable to the financial institution's investment in investment subsidiaries. However, the department will generally allow the average adjusted bases of an investment in investment subsidiaries for the tax year to be calculated using the average of the adjusted bases of the investment in investment subsidiaries held by the financial institution at the end of each month within the tax year. The department generally will allow the average bases of all assets of the financial institution for the tax year to be calculated using the average bases of all assets held by the financial institution at the end of each quarter of the tax year. A financial institution may compute for any tax year, without prior permission of the director, the average adjusted bases of investment in investment subsidiaries or total assets on a more frequent basis than set forth above. However, a financial institution may not compute these averages for any tax year on a less frequent basis than quarterly without obtaining prior approval of the director. This permission will be granted only in extraordinary circumstances. In addition, a financial institution may not compute these averages for any tax year on a less frequent basis than it used for the preceding tax year unless the financial institution obtains prior approval of the director. A

financial institution that has elected to use an estimate of the adjusted tax bases of its total assets for each of the first three quarters of the taxable year under Internal Revenue Service's Revenue Ruling 90-44 for federal income tax purposes may use this estimate for Iowa franchise purposes.

59.20(1) For the purposes of this rule, the term "affiliate" means a corporation, trust, estate, association, or similar organization:

a. Of which a financial institution, directly or indirectly, owns or controls either a majority of the voting shares or more than 50 percent of the number of shares voted for the election of its directors, trustees, or other individuals exercising similar functions at the preceding election, or controls in any manner the election of a majority of its directors, trustees, or other individuals exercising similar functions; or

b. Of which control is held, directly or indirectly, through share ownership or in any other manner, by the shareholders of a financial institution who own or control either a majority of the shares of such financial institution or more than 50 percent of the number of shares voted for election of directors of such financial institution at the preceding election, or by trustees for the benefit of the shareholders of such financial institution; or

c. Of which a majority of its directors, trustees, or other individuals exercising similar functions are directors of any financial institution; or

d. Which owns or controls, directly or indirectly, either a majority of the voting shares of a financial institution or more than 50 percent of the number of shares voted for the election of directors of a financial institution at the preceding election, or controls in any manner the election of a majority of the directors of a financial institution, or for the benefit of those shareholders or members all or substantially all of the outstanding voting shares of a financial institution is held by trustees; or

e. Which is a bank holding company, as defined by the laws of the United States, of which a financial institution is a subsidiary, and any other subsidiary as defined by the laws of the United States, of a bank holding company.

59.20(2) For the purposes of this rule, the term "average adjusted basis" means the financial institution's average adjusted basis as computed pursuant to Section 1016 of the Internal Revenue Code on a separate company basis.

59.20(3) For purposes of this rule, the term "investment subsidiary" means an affiliate that is owned, capitalized or utilized by a financial institution with one of its purposes being to make, hold, or manage, for and on behalf of the financial institution, investments in securities which the financial institution would be permitted by applicable law to make for its own account.

This rule is intended to implement Iowa Code section 422.61 as amended by 1995 Iowa Acts, chapter 193.

701—59.21(422) S corporation and limited liability company financial institutions. For tax years beginning on or after January 1, 1997, a financial institution as defined in Section 581 of the Internal Revenue Code which has in effect an election under Subchapter S of the Internal Revenue Code must compute an amount of income as if the financial institution were subject to federal corporation income tax. For tax years beginning on or after July 1, 2004, a financial institution organized as a limited liability company under Iowa Code chapter 524 that is taxed as a partnership for federal income tax purposes must compute an amount of income as if the financial institution were subject to federal corporation income tax. The income is to be computed in the same manner as a financial institution that is subject to or liable for federal income tax under the Internal Revenue Code in effect for the applicable tax would compute its federal taxable income.

This rule is intended to implement Iowa Code section 422.61 as amended by 2004 Iowa Acts, House File 2484.

701—59.22(422) Deduction for contributions made to the endowment fund of the Iowa educational savings plan trust. To the extent that the contribution was not deductible for federal income tax purposes, any gift, grant, or donation to the endowment fund of the Iowa educational savings plan trust may be deducted for Iowa franchise tax purposes. The contribution must be made on or after July 1,

1998, but before April 15, 2004. Effective April 15, 2004, the deduction for contributions made to the endowment fund is repealed.

This rule is intended to implement Iowa Code sections 422.35 as amended by 1998 Iowa Acts, House File 2119, and 422.61.

701—59.23(422) Additional first-year depreciation allowance.

59.23(1) *Assets acquired after September 10, 2001, but before May 6, 2003.* For tax periods ending after September 10, 2001, but beginning before May 6, 2003, the additional first-year depreciation allowance ("bonus depreciation") of 30 percent authorized in Section 168(k) of the Internal Revenue Code, as enacted by Public Law No. 107-147, Section 101, does not apply for Iowa franchise tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on assets acquired after September 10, 2001, but before May 6, 2003, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after September 10, 2001, but before May 6, 2003, can be calculated on Form IA 4562A.

See 701—subrule 53.22(1) for examples illustrating how this subrule is applied.

59.23(2) *Assets acquired after May 5, 2003, but before January 1, 2005.* For tax periods beginning after May 5, 2003, but beginning before January 1, 2005, the bonus depreciation of 50 percent authorized in Section 168(k) of the Internal Revenue Code, as amended by Public Law No. 108-27, Section 201, may be taken for Iowa franchise tax. If the taxpayer elects to take the 50 percent bonus depreciation, the depreciation deduction allowed on the Iowa franchise tax return is the same as the depreciation deduction allowed on the federal income tax return for assets acquired after May 5, 2003, but before January 1, 2005.

a. If the taxpayer elects to take the 50 percent bonus depreciation and had filed an Iowa return prior to February 24, 2005, which reflected the disallowance of 50 percent bonus depreciation, the taxpayer may choose between two options to reflect this change. Taxpayer may either file an amended return for the applicable tax year to reflect the 50 percent bonus depreciation provision, or taxpayer may reflect the change for 50 percent bonus depreciation on the next Iowa return filed subsequent to February 23, 2005. Taxpayer must choose only one of these two options. Regardless of the option chosen, taxpayer must complete and attach a revised Form IA 4562A to either the amended return or the return filed subsequent to February 23, 2005.

See 701—subrule 40.60(2), paragraph *"a,"* for examples illustrating how this subrule is applied.

b. If the taxpayer elects not to take the 50 percent bonus depreciation, taxpayer must add the total amount of depreciation claimed on assets acquired after May 5, 2003, but before January 1, 2005, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k). If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets. The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after May 5, 2003, but before January 1, 2005, can be calculated on Form IA 4562A.

This rule is intended to implement Iowa Code section 422.35 as amended by 2005 Iowa Acts, House File 102, and section 422.61.

701—59.24(422) Section 179 expensing. For tax periods beginning on or after January 1, 2003, but beginning before January 1, 2006, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 108-27, Section 202, may be taken for Iowa franchise tax. If the taxpayer elects to take the increased Section 179 expensing, the Section 179 expensing allowance on the Iowa franchise tax return is the same as the Section 179 expensing allowance on the federal income tax return for tax years beginning on or after January 1, 2003, but beginning before January 1, 2006.

59.24(1) If the taxpayer elects to take the increased Section 179 expensing and had filed an Iowa return prior to February 24, 2005, which reflected the disallowance of increased Section 179 expensing, the taxpayer may choose between two options to reflect this change. Taxpayer may either file an amended return for the applicable tax year to reflect the increased Section 179 expensing, or taxpayer may reflect the change for increased Section 179 expensing on the next Iowa return filed subsequent to February 23, 2005. Taxpayer must choose only one of these two options. Regardless of the option chosen, taxpayer must complete and attach a revised Form IA 4562A to either the amended return or the return filed subsequent to February 23, 2005.

See 701—subrule 40.65(1) for examples illustrating how this subrule is applied.

59.24(2) If the taxpayer elects not to take the increased Section 179 expensing, the expensing allowance is limited to $25,000 for Iowa tax purposes. The difference between the federal Section 179 expensing allowance on such property, if in excess of $25,000, and the Iowa expensing allowance of $25,000 can be depreciated using the modified accelerated cost recovery system (MACRS) applicable under Section 168 of the Internal Revenue Code without regard to the bonus depreciation provision in Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable Section 179 and related depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both the Section 179 expensing allowance and related depreciation, along with the gain or loss on the sale of qualifying assets for tax years beginning on or after January 1, 2003, but beginning before January 1, 2006, can be calculated on Form IA 4562A.

See 701—subrule 53.23(2) for examples illustrating how this subrule is applied.

This rule is intended to implement Iowa Code section 422.35 as amended by 2005 Iowa Acts, House File 102, and section 422.61.

ALLOCATION AND APPORTIONMENT

701—59.25(422) Basis of franchise tax. Iowa Code section 422.60 imposes a franchise tax on financial institutions (as defined in 701—subrule 57.1(2)) for the privilege of doing business within the state. The tax is measured by net income. For financial institutions subject to the tax, the tax is levied and collected only on income which may accrue or be recognized to the financial institutions from business done or carried on in the state plus net income from certain sources without the state which by rule follows the commercial domicile of the financial institution.

If a financial institution carries on business entirely within the state of Iowa, no allocation or apportionment of its income may be made. The financial institution will be presumed to be carrying on its business entirely within the state of Iowa if its activities are carried on only within Iowa, even though it receives income from sources outside the state in the form of interest, dividends, royalties, and other sources of income from intangibles.

59.25(1) *Definition—doing business.* The term "doing business" is used in a comprehensive sense and includes all activities or any transactions for the purpose of financial or pecuniary gain or profit. Irrespective of the nature of its activities, every financial institution organized for profit and carrying out any of the purposes of its organization shall be deemed to be "doing business." In determining whether a financial institution is doing business, it is immaterial whether its activities actually result in a profit or loss.

59.25(2) *Definition—carrying on business partly within and partly without the state.* "Carrying on business partly within and partly without the state" means having business activities in at least one other state sufficient to meet the minimum constitutional standards for doing business in a state under the due process and commerce clauses of the United States Constitution. The determination of whether a financial institution is carrying on business partly within and partly without the state must be made on a tax-year-by-tax-year basis. The activities of past or future years have no bearing on the current year.

The following nonexclusive activities if done on a regular and continuing basis by financial institution officers or employees in at least one other state would constitute the minimum activities which would meet the constitutional standards for doing business in a state under the due process and commerce clauses of the United States Constitution:

a. Solicitation of loans by traveling loan officers.

b. Collection of overdue accounts.

c. Any other activities carried on in advancement, promotion, or fulfillment of the business of the financial institution.

This rule is intended to implement Iowa Code sections 422.60 and 422.63.

701—59.26(422) Allocation and apportionment.

59.26(1) The classification of income by the labels customarily given, such as interest, dividends, rents, and royalties, is of no aid in determining whether that income is business or nonbusiness income. Interest, dividends, rents and royalties shall be apportioned as business income to the extent the income was earned as a part of a financial institution's unitary business, a portion of which is conducted in Iowa. *Mobil Oil Corp. v. Commissioner of Taxes,* 455 U.S. 425 (1980); *ASARCO, Inc. v. Idaho State Tax Commission,* 458 U.S. 307, 73 L.Ed.2d 787, 102 S.Ct. 3103 (1982); *F. W. Woolworth Co. v. Taxation and Revenue Dept.,* 458 U.S. 354, 73 L.Ed.2d 819, 102 S.Ct. 3128 (1982); *Container Corporation of America v. Franchise Tax Board,* 463 U.S. 159, 77 L.Ed.2d 545, 103 S.Ct. 2933 (1983). Whether income is part of a financial institution's unitary business income depends upon the facts and circumstances in the particular situation. The burden of proof is upon the taxpayer to show that the treatment of income on the return as filed is proper. There is a rebuttable presumption that an affiliated group of financial institutions in the same line of business have a unitary relationship, although that is not the only element used in determining unitariness.

59.26(2) Application of related expense to nonbusiness income. Subrule 59.26(1) deals with the separation of "net" income, therefore, determination and application of related expenses must be made, as hereinafter directed, before allocation and apportionment within and without Iowa. Related expenses shall mean those expenses directly related.

A directly related expense shall mean an expense which can be specifically attributed to an item of income. Interest expense shall be considered directly related to a specific property which generates, has generated, or could reasonably have been expected to generate gross income if the existence of all of the facts and circumstances described below is established. Such facts and circumstances are as follows:

a. The indebtedness on which the interest was paid was specifically incurred for the purpose of purchasing, maintaining, or improving the specific property;

b. The proceeds of the borrowing were actually applied to the specified purpose;

c. The creditor can look only to the specific property (or any lease or other interest therein) as security for the loan;

d. It may be reasonably assumed that the return on or from the property will be sufficient to fulfill the terms and conditions of the loan agreement with respect to the amount and timing of payment of principal and interest; and

e. There are restrictions in the loan agreement on the disposal or use of the property consistent with the assumptions described in *"c"* and *"d"* above.

A deduction for interest may not be considered definitely related solely to specific property, even though the above facts and circumstances are present in form, if any of the facts and circumstances are not present in substance. Any expense directly attributable to allocable interest, dividends, rents and royalties shall be deducted from income to arrive at net allocable income.

EXAMPLE: For purposes of this example, it is assumed that the taxpayer has nonbusiness rental income. The taxpayer invests in a 20-story office building. Under the terms of the lease agreements, the taxpayer provides heat, electricity, janitorial services, and maintenance. The taxpayer also pays the property taxes. Construction of the building was funded through borrowings which meet the criteria of a direct expense under the provisions of this paragraph. The directly related expenses to the operation of the property are:

Interest expense	$1,200,000
Property taxes	500,000
Depreciation	500,000
Electricity	300,000
Heat	200,000
Insurance	150,000
Janitorial services	100,000
Repairs	50,000
Total expenses	$3,000,000

The directly related expense of the allocable rental income is $3,000,000.

This rule is intended to implement Iowa Code section 422.63.

701—59.27(422) Net gains and losses from the sale of assets. For purposes of administration of this rule, a capital gain or loss shall mean the sale price or value at the time of disposal of an asset less the adjusted basis, whether reportable as short-term or long-term capital gain or ordinary income for federal income tax purposes.

59.27(1) Gain or loss from the sale, exchange, or other disposition of real or tangible or intangible personal property, if the property while owned by the taxpayer was used in the taxpayer's trade or business, shall be apportioned by the business activity ratio applicable to the year the gain or loss is reported on the federal income tax return and may at the taxpayer's election be included in the computation of the business activity ratio as follows:

a. Gain from the sale, exchange, or other disposition of real property shall be included in the numerator if the property is located in this state.

b. Gain from the sale, exchange, or other disposition of tangible personal property shall be included in the numerator if:

(1) The property has a situs in this state at the time of sale; or

(2) The taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

c. Gains from the sale, exchange, or other disposition of intangible personal property shall be included in the numerator if the taxpayer's commercial domicile is in this state.

d. All gains shall be included in the denominator of the activity ratio.

A taxpayer cannot elect to exclude or include gains or loss from the sale of assets where the election would result in an understatement of income reasonably attributable to Iowa. Noninclusive examples of gains or loss from the sale, exchange or other disposition of real or tangible or intangible property which may not be included in the computation of the business activity ratio because to do so would result in an understatement of net income reasonably attributable to Iowa are the gain recognized under an election pursuant to Section 338 of the Internal Revenue Code or gain recognized under Section 631(a) of the Internal Revenue Code.

59.27(2) Gain or loss from the sale, exchange, or other disposition of property not used in the taxpayer's trade or business shall be allocated as follows:

a. Gains or losses from the sale, exchange, or other disposition of real property located in this state are allocable to this state.

b. Gains or losses from the sale, exchange, or other disposition of tangible personal property are allocable to this state if:

(1) The property has a situs in this state at the time of sale; or

(2) The taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

c. Gains or losses from the sale, exchange, or other disposition of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

This rule is intended to implement Iowa Code section 422.63.

701—59.28(422) Apportionment factor. In determining the total net taxable income, the apportionable income attributable to this state, as determined by use of the apportionment fraction, shall be added to the nonapportionable income allocable to this state.

59.28(1) Receipts derived from transactions and activities in the regular course of trade or business which produce business income are included in the denominator of the apportionment factor. Income which is not subject to the Iowa franchise tax shall not be included in the computation of the apportionment factor.

59.28(2) The numerator of the apportionment factor is that portion of the total receipts included in the denominator of the taxpayer attributable to this state during the income year determined as follows:

a. Receipts from the lease, rental, or other use of real property shall be included in the numerator if the real property is located in Iowa.

b. Receipts from the sale of tangible personal property shall be included in the numerator if the property is delivered or shipped to a purchaser in this state regardless of the f.o.b. point or other conditions of the sales.

c. Receipts from the use of tangible personal property shall be included in the numerator of the business activity formula to the extent that property is utilized in Iowa. The extent of utilization of tangible personal property in a state is determined by multiplying the rent by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental periods in the taxable year. If the physical location of the property during the rental period is unknown or not ascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental payer obtained possession.

d. All royalty income from intangible personal property determined to be business income shall be included in the numerator of the business activity formula if the taxpayer's commercial domicile is in Iowa. All royalty income from tangible personal property or real property determined to be business income shall be included in the numerator of the business activity formula if the situs of the tangible personal property or real property is within Iowa.

e. Interest and other receipts from assets in the nature of loans (including federal funds sold and banker's acceptances) and installment obligations shall be attributed to the state where the borrower is located.

f. Interest income from a participating bank's portion of participation loan shall be attributed to the state where the borrower is located.

g. Interest income from loans solicited by traveling loan officers shall be attributed to the state where the borrower is located.

h. Interest or service charges from bank, travel, and entertainment credit card receivables and credit card holders' fees shall be attributed to the state in which the credit card holder resides in the case of an individual or, if a corporation, to the state of the corporation's commercial domicile.

i. Merchant discount income derived from bank and financial corporation credit card holder transactions with a merchant shall be attributed to the state in which the merchant is located. It shall be presumed that the location of the merchant is the address on the invoice submitted by the merchant to the taxpayer.

j. Receipts for the performance of fiduciary services are attributable to the state where the services are principally performed.

k. Receipts from investments of a bank in securities, the income from which constitutes business income, shall be attributed to its commercial domicile except that:

(1) Receipts from securities used to maintain reserves against deposits to meet federal and state reserve deposit requirements shall be attributed to each state based upon the ratio that total deposits in the state bear to total deposits everywhere.

(2) Receipts from securities owned by a bank but held by a state treasurer or other public official or pledged to secure public or trust funds deposited in the bank shall be attributed to the banking office at which the secured deposit is maintained.

l. Receipts (fees or charges) from the issuance of traveler's checks and money orders shall be attributed to the state where the taxpayer's office is located that issued the traveler's checks. If the traveler's checks are issued by an independent representative or agent of the taxpayer, the fees or charges shall be attributed to the state where the independent representative or agent issued the traveler's checks.

m. Fees, commissions, or other compensation for financial services rendered for a customer located in this state or an account maintained within this state.

n. Any other gross receipts resulting from the operation as a financial organization within the state to the extent the items do not represent a recapture of an expense.

o. Receipts from management services if the recipient of the management services is located in this state.

This rule is intended to implement Iowa Code section 422.63.

701—59.29(422) Allocation and apportionment of income in special cases. If a taxpayer feels that the allocation and apportionment method as prescribed by rule 701—59.28(422) in the taxpayer's case results in an injustice, the taxpayer may petition the department for permission to determine the taxable net income, both allocable and apportionable, to the state on some other basis.

The taxpayer must first file the return as prescribed by rule 701—59.28(422) and pay the tax shown due thereon. If a change to some other method is desired, a statement of objections and schedules detailing the alternative method shall be submitted to the department. The department shall require detail and proof within the time as the department may reasonably prescribe. In addition, the alternative method of allocation and apportionment will not be allowed where the taxpayer fails to produce, upon request of the department, any information the department deems necessary to analyze the request for an alternative method of allocation and apportionment. The petition must be in writing and shall set forth in detail the facts upon which the petition is based. The burden of proof will be on the taxpayer as to the validity of the method and its results. The mere fact that an alternative method of apportionment or allocation produces a lesser amount of income attributable to Iowa is, per se, insufficient proof that the statutory method of allocation and apportionment is invalid. *Moorman Manufacturing Company v. Bair,* 437 U.S. 267, 57 L.Ed.2d 197 (1978). In essence, a comparison of the statutory method of apportionment with another formulary apportionment method is insufficient to prove that the taxpayer would be entitled to the alternative formulary apportionment method. *Moorman Manufacturing Company v. Bair,* supra.

One of the possible alternative methods of allocation and apportionment is separate accounting provided the taxpayer's activities in Iowa are not unitary with the taxpayer's activities outside Iowa. Any corporation deriving income from business operations partly within and partly without Iowa must determine that net business income attributable to this state by the prescribed formula for apportioning net income, unless the taxpayer proved by clear and cogent evidence that the statutory formula apportions income to Iowa out of all reasonable proportion to the business transacted within Iowa. *Moorman Manufacturing Company v. Bair,* supra.

Separate accounting is not allowable for a unitary business where the separate accounting method fails to consider factors of profitability resulting from functional integration, centralization of management, and economics of scale. *Shell Oil Company v. Iowa Department of Revenue,* 414 N.W.2d 113 (Iowa 1987).

The burden of proof that the statutory method of apportionment attributes to Iowa income out of all reasonable proportion to the business transacted within Iowa is on the taxpayer. In order to utilize separate accounting, the taxpayer's books and records must be kept in a manner that accurately depicts

the exact geographical source of profits. In any petition to utilize separate accounting, the taxpayer must submit schedules which accurately depict net income by division or product line and the amount of income earned within Iowa.

There are alternative methods of separate accounting utilizing different accounting principles. A mere showing that one separate accounting method produces a result substantially different than the statutory method of apportionment is not sufficient to justify the granting of the separate accounting method shown. The taxpayer must not only show that the separate accounting method advocated by the taxpayer in comparison with the statutory method of apportionment produces a result which, if the statutory method of apportionment were used, would be out of all reasonable proportion to the business transacted within Iowa. The taxpayer must also show that all other conceivable reasonable separate accounting methods would show, when compared with the statutory method of apportionment, that the statutory method of apportionment substantially produces a distorted result.

As used in this rule, "statutory method of apportionment" means the apportionment factor set forth in rule 701—59.28(422).

All requests to use an alternative method of allocation and apportionment submitted to the department will be considered by the compliance division if the request is the result of an audit or by the policy section of the compliance division if the request is received prior to audit. If the department concludes that the statutory method of allocation and apportionment is, in fact, both inapplicable and inequitable, the department shall prescribe a special method. The special method of allocation and apportionment prescribed by the department may be that requested by the taxpayer or some other method of allocation and apportionment which the department deems to equitably attribute income to business activities carried on within Iowa.

If the taxpayer disagrees with the determination of the department, the taxpayer may file a protest within 60 days of the date of the letter setting forth the department's determination and the reasons therefor in accordance with rule 701—7.41(17A). The department's determination letter shall set forth the taxpayer's rights to protest the department's determination.

If no protest is filed within the 60-day period, then no hearing will be granted on the department's determination under this rule. However, this does not preclude the taxpayer from subsequently raising this question in the event that the taxpayer protests an assessment or denial of a timely refund claim, but this issue will only be dealt with for the years involved in the assessment or timely refund claim.

The use of an alternative method of allocation and apportionment would only be applicable to the years under consideration at the time the special method of allocation and apportionment is prescribed. The taxpayer's continued use of a prescribed method of allocation and apportionment will be subject to review and change within the statutory, or legally extended period(s).

If there is a material change in the business operations or accounting procedures from those in existence at the time the taxpayer was permitted to determine the net income earned within Iowa by an alternative method of allocation and apportionment, the taxpayer shall apprise the department of such changes prior to filing the taxpayer's return for the current year. After reviewing the information submitted, along with any other information the department deems necessary, the department will notify the taxpayer if the alternative method of allocation and apportionment is deemed applicable.

This rule is intended to implement Iowa Code section 422.63.

Rules 701—59.25(422) to 701—59.29(422) are effective for tax years beginning on or after June 1, 1989.

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◊ Two or more ARCs

CHAPTER 60
ASSESSMENTS, REFUNDS, APPEALS
[Prior to 12/17/86, Revenue Department[730]]

701—60.1(422) Notice of discrepancies.

60.1(1) *Notice of adjustment.* An employee of the department, designated by the director to examine returns and make audits, who discovers discrepancies in returns or learns that the income of the taxpayer may not have been listed, in whole or in part, or that no return was filed when one was due, is authorized to notify the taxpayer of the discovery by ordinary mail. The notice shall not be termed an assessment, and it may inform the taxpayer of the amount due if the information discovered is correct.

60.1(2) *Right of taxpayer upon receipt of notice of adjustment.* A taxpayer who has received notice of an adjustment in connection with a return may pay the additional amount stated to be due. If payment is made, and the taxpayer wishes to contest the matter, the taxpayer should then file claim for refund. However, payment will not be required until assessment has been made (although interest will continue to accrue if payment is not made). If no payment is made, the taxpayer may discuss with the employee who notified the taxpayer of the discrepancy, either in person or through correspondence, all matters of fact and law which the taxpayer considers relevant to the situation. Documents and records supporting the taxpayer's position may be required.

This rule is intended to implement Iowa Code sections 422.25, 422.28 and 422.66.

701—60.2(422) Notice of assessment. If after following the procedure outlined in subrule 60.1(2) no agreement is reached, and the taxpayer does not pay the amount determined to be correct, a notice of assessment shall be sent to the taxpayer by mail. If the period in which the correct amount of tax can be determined is nearly at an end, either a notice of assessment, without compliance with subrules 60.1(1) and 60.1(2), or a jeopardy assessment may be issued. All notices of assessment shall bear the signature of the director.

This rule is intended to implement Iowa Code sections 422.25, 422.30 and 422.66.

701—60.3(422) Refund of overpaid tax. The following are provisions for refunding or crediting to the taxpayer deposits or payments for tax in excess of amounts legally due.

60.3(1) A claim for refund of franchise tax may be made on a form obtainable from the department. Claims for refund should not be mailed in the same envelope or attached to the return. In the case of a claim filed by an agent of the taxpayer, a power of attorney must accompany the claim.

60.3(2) A franchise taxpayer shall not offset a refund or overpayment of tax for one year as a prior payment of tax of a subsequent year on the return of a subsequent year without authorization in writing by the department. The department may, however, apply an overpayment, or a refund otherwise due the taxpayer, to any tax due or to become due from the taxpayer.

60.3(3) When an overpayment of estimated tax is indicated on the face of the return, the overpayment will ordinarily be refunded to the taxpayer by the department without the filing of a formal claim for refund. If a refund of the indicated overpayment is not received within a reasonable period of time, a claim for refund may be filed by the taxpayer on an official form obtainable from the Taxpayer Services Section, Iowa Department of Revenue, P.O. Box 10457, Des Moines, Iowa 50306.

If an overpayment of income tax is claimed as a credit against estimated tax for the succeeding taxable year, such amount shall be considered as a payment of the income tax for the succeeding taxable year and no claim for credit or refund shall be allowed.

When a taxpayer elects to have an overpayment credited to estimated tax for the succeeding year, interest may be properly assessed on a deficiency of income tax for the year in which the overpayment arose. If a taxpayer elects to have all or part of an overpayment shown on the return applied to the estimated income tax for the succeeding taxable year or refunded, the election is binding to the taxpayer.

An overpayment of tax may be used to offset any outstanding tax liability owed by the taxpayer, but once an elected amount is credited as a payment of estimated tax for the succeeding year, it loses its

character as an overpayment for the year in which it arose and thereafter cannot offset any subsequently determined tax liability.

60.3(4) Refunds—statute of limitations for tax years ending before January 1, 1979. Rescinded IAB 11/24/04, effective 12/29/04.

60.3(5) Refunds—statute of limitations for tax years ending after January 1, 1979. The statute of limitations with respect to which refunds or credits may be claimed is:

a. The later of:

(1) Three years after the due date of payment upon which refund or credit is claimed; or

(2) One year after which such payment was actually made.

b. Six months from the date of final disposition of any federal income tax matter with respect to the particular tax year. The taxpayer, however, must have notified the department of the matter within six months after the specified three-year period. The term "matter" includes, but is not limited to, the execution of waivers and commencement of audits. The refund is limited to those matters between the taxpayer and the Internal Revenue Service which affect Iowa taxable income. *Kelly-Springfield Tire Co. v. Iowa State Board of Tax Review,* 414 N.W.2d 113 (Iowa 1987).

c. For federal audits finalized on or after July 1, 1991, the taxpayer must claim a refund or credit within six months of final disposition of any federal income tax matter with respect to the particular tax year regardless when the tax year ended. It is not necessary for the taxpayer to have previously notified the department within the period of limitations specified in 60.3(5)*"a"*(1) of a matter between the taxpayer and the Internal Revenue Service in order to receive a refund or credit. The term "matter" includes, but is not limited to, the execution of waivers and commencement of audits. The refund or credit is limited to those matters between the taxpayer and the Internal Revenue Service which affect Iowa taxable income. *Kelly-Springfield Tire Co. v. Iowa State Board of Tax Review,* 414 N.W.2d 113 (Iowa 1987).

d. Three years after the due date of the return for the year in which a net operating loss or capital loss occurs, which if carried back results in a reduction of tax in a prior period and an overpayment results.

60.3(6) Refunds—special statute of limitations. Notwithstanding the above periods of limitation, a claim for credit or refund is considered timely if the claim is filed with the department on or before June 30, 1999, if the taxpayer's federal income tax was refunded due to a provision in the Taxpayer Relief Act of 1997, Public Law 105-34, which affected the corporation's federal taxable income and the claim is based on the change in federal taxable income caused by the provisions of Public Law 105-34.

60.3(7) Refunds—statute of limitations for taxpayers who paid 90 percent of the tax by the due date and filed the original return in the six-month extended period. If a taxpayer has paid 90 percent of the income tax required to be shown due by the original due date of the return and has filed the original income tax return sometime in the six-month extended period after the original due date, the taxpayer may file an amended return within three years of the extended due date of the return and shall be within the statute of limitations for refund. This position is supported by the Iowa Supreme Court in *Conoco, Inc. v. Iowa Department of Revenue and Finance*, 477 N.W.2d 377 (Iowa 1991). See also 701—subrule 39.2(4) which pertains to the extended period for filing the Iowa income tax return when 90 percent of the tax is paid by the original due date of the Iowa income tax return.

See 701—subrule 55.3(7) for examples illustrating how this rule is applied.

This rule is intended to implement Iowa Code sections 422.66 and 422.73 as amended by 1998 Iowa Acts, Senate File 2357.

701—60.4(421) Abatement of tax. For notices of assessment issued on or after January 1, 1995, if the statutory period for appeal has expired, the director may abate any portion of unpaid tax, penalties or interest which the director determines to be erroneous, illegal, or excessive. See rule 701—7.31(421) for procedures on requesting abatement of tax.

This rule is intended to implement Iowa Code section 421.60.

701—60.5(422) Protests. A taxpayer may appeal to the director at any time within 60 days from the date of the notice of the assessment of tax, additional tax, interest or penalties. For assessments issued on or after January 1, 1995, if a taxpayer failed to timely appeal a notice of assessment, the taxpayer may pay the entire assessment and file a refund claim within the period provided by law for filing such claims. In addition, a taxpayer may appeal to the director at any time within 60 days from the date of notice from the department denying changes in filing methods, denying refund claims, or denying portions of refund claims.

This rule is intended to implement Iowa Code sections 421.10, 421.60 and 422.28.

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CHAPTER 61
ESTIMATED TAX FOR FINANCIAL INSTITUTIONS
[Prior to 12/17/86, Revenue Department[730]]

701—61.1(422) Who must pay estimated tax.

61.1(1) *General rule.* Every corporate taxpayer subject to the franchise tax on financial institutions shall pay estimated tax if the amount of tax payable, less credits, can reasonably be expected to be more than $1000 for the calendar or fiscal year. The amount of estimated tax paid shall be used as a credit on the Iowa franchise tax return.

61.1(2) *Definition.* For purposes of this division, "estimated tax" means the amount which the taxpayer estimates to be the tax due and payable under division V of Iowa Code chapter 422.

This rule is intended to implement Iowa Code section 422.85 as amended by 1989 Iowa Acts, Senate File 154.

701—61.2(422) Time for filing and payment of tax.

61.2(1) *Time for filing.*

a. *General rule.* The date for filing the first estimated tax payment is on or before the last day of the fourth month of the tax year. The estimated tax form is to be filed with the Franchise Estimate Processing, P.O. Box 10413, Des Moines, Iowa 50306.

b. *Amended estimates.* Generally, whenever a taxpayer who is required to make estimated tax payments has reason to believe that its Iowa franchise tax may increase or decrease, an amended estimate shall be filed at such time to reflect the increase or decrease in estimated Iowa franchise tax. The amended estimate shall be made on or before the next installment date. The unpaid balance after amending the estimate should be paid in equal installments on the remaining payment dates.

61.2(2) *Payment of estimated tax.*

a. *General rule.* Estimates may be paid in full at the time of the first filing or in four equal installments. The taxpayer may also elect to pay any installment prior to the date prescribed.

b. *Calendar year.* The first installment for a corporation filing on a calendar year basis is due by April 30. The other installments, if applicable, shall be paid on or before June 30, September 30, and December 31 of the current year.

c. *Fiscal year.* The installment dates for a financial institution filing on a fiscal year basis are:

Installment No. 1. The last day of the fourth month of the fiscal year.

Installment No. 2. The last day of the sixth month of the fiscal year.

Installment No. 3. The last day of the ninth month of the fiscal year.

Installment No. 4. The last day of the twelfth month of the fiscal year.

This rule is intended to implement Iowa Code sections 422.85 as amended by 1989 Iowa Acts, Senate File 154, and 422.86.

701—61.3(422) Special estimate periods.

61.3(1) *Short taxable year.* A financial institution having a taxable year of less than 12 months shall pay estimated tax if anticipating an Iowa tax liability of more than $1,000 for that short taxable year.

a. Short taxable year where a new financial institution first commences doing business. In filing the first estimated tax payment, the taxpayer shall state the tax period that the estimated tax payment covers.

(1) If the tax year is three months or less, no estimated tax payment need be made.

(2) If the tax year is greater than three months, but not more than four months, and estimated tax payment is required to be made on the last day of the fourth month, the estimated tax shall be paid based upon the taxable income for the first three months.

(3) If the tax year is greater than four months, but not more than six months, and the first estimated tax payment is required to be made on the last day of the fourth month, the estimated tax shall be paid in two equal installments. The first installment shall be due the last day of the fourth month based on the first three months' taxable income annualized by multiplying the taxable income by the number of

months in the tax year and dividing by three. The second installment shall be due the last day of the tax year.

If the first estimated tax payment is required to be made after the fourth month, the estimated tax payment shall be made on the last day of the tax year and the estimated tax shall be paid in one installment based upon the taxable income for the first four months if the tax year ends during the fifth month or for the first five months if the tax year ends during the sixth month.

(4) If the tax year is greater than four months, but not more than nine months, and the first estimated tax payment is required to be made on the last day of the fourth month, the estimated tax shall be paid in three equal installments. The first installment shall be due the last day of the fourth month based on the first three months' taxable income annualized by multiplying the taxable income by the number of months in the tax year and dividing by three. The second installment shall be due the last day of the sixth month of the tax year. The third installment shall be due the last day of the tax year.

If the first estimated tax payment is required to be made on the last day of the sixth month of the tax year, the estimated tax shall be paid in two equal installments. The first installment shall be due on the last day of the sixth month based upon the first five months' taxable income annualized by multiplying the taxable income by the number of months in the tax year and dividing by five. The second installment shall be due on the last day of the tax year.

If the first estimated tax payment is required to be made after the last day of the sixth month of the tax year, the estimated tax payment shall be made on the last day of the tax year and the estimated tax shall be paid in one installment based on the taxable income for the first seven months if the tax year ends during the eighth month or for the first eight months if the tax year ends during the ninth month.

(5) If the tax year is greater than four months, but not more than eleven months, and the first estimated tax payment is required to be made on the last day of the fourth month, the estimated tax shall be paid in four equal installments. The first installment shall be due the last day of the fourth month based upon the first three months' income annualized by multiplying the taxable income by the number of months in the tax year and dividing by three. The second installment shall be due on the last day of the sixth month of the tax year. The third installment shall be due on the last day of the ninth month of the tax year. The fourth installment shall be due the last day of the tax year.

If the first estimated tax payment is required to be made on the last day of the sixth month of the tax year, the estimated tax shall be paid in three equal installments. The first installment shall be due on the last day of the sixth month based upon the first five months' taxable income annualized by multiplying the taxable income by the number of months in the tax year and dividing by five. The second installment shall be due the last day of the ninth month of the tax year. The third installment shall be due on the last day of the tax year.

If the first estimated tax payment is required to be made on the last day of the ninth month of the tax year, the estimated tax shall be paid in two equal installments. The first installment shall be due on the last day of the ninth month, based upon the first eight months' taxable income annualized by multiplying the taxable income by the number of months in the tax year and dividing by eight. The second installment shall be due the last day of the tax year.

If the first estimated tax payment is required to be made after the last day of the ninth month of the tax year, the estimated tax payment shall be made on the last day of the tax year and the estimated tax shall be paid in one installment based upon the taxable income for the first nine months if the tax year ends during the tenth month or for the first ten months if the tax year ends during the eleventh month.

(6) If during the tax year, the taxpayer determines that its tax year will be different than the tax year specified in its original payment of estimated tax, the remaining estimated tax payments, if any, shall be based upon the above schedule.

b. Short taxable year where the taxpayer is liquidated during the tax year or where under any provision of the Internal Revenue Code the taxpayer is required to file a return for a period of less than 12 months.

(1) If the tax year is three months or less, no estimated tax payment need be made.

(2) If the tax year is greater than three months, an estimated tax payment shall be made the same as if the taxpayer's tax year is a full 12 months except that the final installment shall be due the last day of the tax year.

(3) Special exception to penalty. If the taxpayer uses the exception under Iowa Code subsection 422.89(1) to avoid the penalty for underpayment of estimated tax, no penalty will accrue if the following conditions are met: (a) The total amount of all payments of estimated tax made on or before the last date prescribed for the payment of estimated tax equals the prior year's tax multiplied by the number of months in the short tax year and divided by 12, and (b) a return for the preceding tax year of a full 12 months showing a tax liability was filed by the taxpayer.

61.3(2) *Doing business for less than a full year.*

a. *General rule.* A financial institution which commences or ceases to do business during any part of the year shall determine its Iowa estimated tax on that portion of income earned while doing business during the year.

b. *Example.* A bank which first begins doing business in this state on April 15 and which expects a tax liability of $1,500 must make its first payment of estimated tax of $500 by June 30 and pay the remaining balance of $1,000 in two equal installments of $500 each by September 30 and December 31 of the tax year.

This rule is intended to implement Iowa Code section 422.92.

701—61.4(422) Reporting forms. Financial institutions which have paid estimated tax in the prior year will receive by mail a preaddressed reporting form. Blank reporting forms are available from the department for those making an estimate for the first time, or when the preaddressed form is misplaced or lost.

This rule is intended to implement Iowa Code section 422.21.

701—61.5(422) Penalties. Failure to file and underpayment of estimated tax.

61.5(1) *Underpayment penalty.*

a. A penalty is imposed for underpayment of the estimated tax by the taxpayer. This underpayment penalty is imposed whether or not there was reasonable cause for the underpayment. The Iowa penalty for underpayment of estimated tax is computed on Form IA 2220.

b. The amount of the underpayment penalty is determined at the statutory rate upon the amount of underpayment of the estimated tax for the period from the date the amount is required to be paid until the last day of the fourth month following the close of the income year, or the date the underpayment is paid, whichever is earlier.

EXAMPLE. A calendar year financial institution is required to make four equal estimated payments of $2,500 in the current year to meet the exception to the underpayment of estimated tax penalty. The financial institution does not make a first quarter estimated payment which was due on April 30, but makes an estimated payment of $5,000 for the second quarter on June 30. The financial institution is subject to the underpayment of estimated tax penalty for the period from April 30 to June 30, when the underpayment was paid.

61.5(2) *Exception to imposition of the underpayment penalty.*

a. *In general.* The underpayment penalty will not be imposed for any underpayment if, on or before the date prescribed for payment, the total amount of all payments made of the estimated tax equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were the least of the following amounts:

(1) The tax shown on the return for the preceding taxable year, provided that the preceding taxable year was a taxable year of 12 months and a return showing a tax liability was filed for such year;

(2) An amount equal to a tax determined on the basis of the tax rates for the taxable year but otherwise on the basis of the facts shown on the return for the preceding taxable year if the taxable year was a taxable year of 12 months or, if the preceding taxable year was a taxable year of less than 12 months, then by placing the income on an annual basis and the law applicable to the preceding year, in the case of a taxpayer required to file a return for the preceding taxable year; or

(3) An amount equal to 90 percent of the tax determined by placing on an annual basis the net income for the first 3, 5, 6, 8, 9, or 11 months of the taxable year, whichever is applicable. The net income so determined shall be placed on an annual basis by multiplying it by 12, and dividing the resulting amount by the number of months in the taxable year for which the net income was so determined.

b. *Statement of exception.* If there has been an underpayment of the amount of the estimated tax, and the taxpayer believes that one or more of the exceptions to the penalty preclude the assertion of the underpayment penalty, the taxpayer should attach a statement showing the applicability of any exception upon which the taxpayer relies.

61.5(3) *Exception to imposition of the underpayment penalty for taxable years beginning on or after July 1, 1978, and on or before June 30, 1979.* Rescinded IAB 12/20/95, effective 1/24/96.

61.5(4) *Exception to imposition of the underpayment penalty for taxable years beginning on or after July 1, 1977, and on or before June 30, 1978.* Rescinded IAB 12/20/95, effective 1/24/96.

This rule is intended to implement Iowa Code sections 422.88, 422.89 and 422.90.

701—61.6(422) Overpayment of estimated tax.

61.6(1) *Refund of overpayment of estimated tax.* Any overpayment of estimated tax, at the taxpayer's election, of $5 or more will be refunded with interest without a claim for refund being filed. If the overpayment is less than $5, it will be refunded only if the taxpayer files a claim for refund within 12 months after the due date of the return.

61.6(2) *Interest on refunds of overpayments of estimated tax.* Interest begins to accrue on the first day of the second calendar month following the date of payment or the date the return was due to be filed, or was filed, whichever is the latest. The rate of interest shall be that set forth in rule 701—10.2(421).

61.6(3) *Credit to next year's tax.* In lieu of claiming a refund, the taxpayer may elect to have the overpayment credited to the next year's tax liability. The election may not be changed after the due date for filing the return considering any extension of time to file. If the taxpayer elects to have the overpayment credited to the next year's tax liability, the overpayment will be credited to the first installment if the overpayment arose on or before the due date of the return. If the overpayment arises after the due date of the return, the overpayment will be credited to the first installment due after the date of payment. The taxpayer may by a written election included with the filing of the return elect to have the overpayment credited to a different installment. Revenue Ruling 84-58.

This subrule is effective for tax years beginning on or after January 1, 1984.

61.6(4) *Estimated tax carryforwards and how the carryforward amounts are affected under different circumstances.*

a. Estimated tax carryforward and how the amount of carryover credit is affected by error on return. If a state return is timely filed with an overpayment shown on the return and the overpayment is to be credited to the taxpayer's estimated payments for the following year, the amount credited to estimated payments will be affected by an error on the return. Thus, if the error on the return is corrected and results in a smaller overpayment than was shown when the return was filed, the credit to estimated tax from the return will be reduced accordingly.

EXAMPLE: Financial Institution X filed its 1994 return on April 20, 1995, showing an overpayment of $400 and a credit to 1995 estimated tax of $400. During processing of the return, it was determined that interest from municipal bonds was subtracted from net income instead of being added to net income. Correction of this error resulted in an overpayment of $200 instead of $400. Thus, the amount credited to the taxpayer's estimated payments for 1995 was $200 instead of the $400 shown on the return form. The department notified Financial Institution X of the error and advised that only $200 was being credited to the taxpayer's estimated tax for 1995 instead of the $400 shown on the return.

b. Estimated tax credit carryover, the carryforward amount affected by amended return. A taxpayer timely files an original return with an overpayment and with the overpayment credited to the following year's estimated tax payments. If the taxpayer files an amended return correcting an error on the original return and with a different amount credited to estimated tax than on the original return, the credit amount from the amended return will be credited to estimated tax, if the amended return is filed before the last day of the following tax year. Thus, if an amended return for tax year ending

September 30, 1995, is filed by September 30, 1996, the amount shown as a credit to estimated tax from that amended return will be the amount credited to the taxpayer's September 30, 1996, estimated tax, instead of the amount credited from the original September 30, 1995, return.

EXAMPLE: Financial Institution Y filed its original September 30, 1995, return on January 15, 1996, with an overpayment of $500 and all of the overpayment credited to its estimated tax for the tax year ending September 30, 1996. Later, in 1996, Y determined that it had failed to claim a deduction on the return for depreciation on some business equipment it acquired in tax year ending September 30, 1995. Therefore, Y filed an amended Iowa return for tax year ending on September 30, 1995, on July 15, 1996, showing an overpayment of $700 and a credit to estimated tax of the same amount. Y's amended return was filed on or before September 30, 1996, so the $700 credit to Y's estimated tax for tax year ending September 30, 1996, from the amended return was allowed.

Note that if the amended return had not been filed until sometime in October 1996, the credit from Y's original return would have been applied to Y's estimated payments for tax year ending September 30, 1996. Since the amended return would have been filed too late for purposes of crediting the overpayment to the taxpayer's estimated tax for the next year, the department would issue Y a refund of $200 which is the portion of the overpayment from the amended return that had not been credited to estimated tax from the original return for tax year ending September 30, 1995.

c. Estimated tax carryforward and how the amount of carryover credit is affected by state tax liability or other state liability of the taxpayer. A taxpayer who files an Iowa return with an overpayment shown on the return and elects to have the overpayment credited to the taxpayer's estimated tax for the next tax year will not have the overpayment credited to estimated tax, if the taxpayer has tax liabilities or other liabilities with the state that are subject to setoff. Other liabilities with the state that are subject to setoff are those liabilities described in Iowa Code section 8A.504. These liabilities are for district court debts, and any other debts of the taxpayer with a board, commission, department, or other administrative office or unit of the state of Iowa.

EXAMPLE: Financial Institution Z filed its 1994 Iowa return in April 1995 showing an overpayment of $400 and a credit to 1995 estimated tax of $400. During processing of Financial Institution Z's 1994 return it was determined that Financial Institution Z had a liability of $150 from its 1993 Iowa return. Thus, $150 of the 1994 overpayment was offset against the tax liability from the 1993 return. The remaining portion of the 1994 overpayment of $250 was credited to Financial Institution Z's estimated tax for 1995.

61.6(5) *Accrual of interest on an assessment of additional tax.* If the taxpayer has not elected to have an overpayment credited to an installment other than the first installment, interest shall accrue on an assessment of additional tax as follows. If the overpayment was credited to the first installment, interest on an assessment of additional tax shall accrue from the due date of the return. If the overpayment was credited to an installment due after the overpayment arose, interest shall accrue from the date the return was filed. Interest on that portion of an assessment greater than the overpayment shall accrue from the due date of the return.

If the taxpayer has elected to have an overpayment of estimated tax credited to an installment other than the first, interest shall accrue on any assessment of additional tax up to the amount of the overpayment from the date the return was filed with the department. Interest on any assessment of additional tax greater than the amount of the overpayment shall accrue from the due date of the return. *Avon Products, Inc. v. United States,* 588 F.2d 342 (2nd Cir. 1978), Revenue Ruling 84-58.

This subrule is effective for tax years beginning on or after January 1, 1984.

This rule is intended to implement Iowa Code section 422.91.

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CHAPTER 62
Reserved

CHAPTER 63
ADMINISTRATION
[Prior to 12/17/86, Revenue Department[730]]

Rescinded IAB 11/19/08, effective 12/24/08

CHAPTER 64
MOTOR FUEL
[Prior to 12/17/86, Revenue Department[730]]

Rescinded IAB 11/19/08, effective 12/24/08

CHAPTER 65
SPECIAL FUEL
[Prior to 12/17/86, Revenue Department[730]]

Rescinded IAB 11/19/08, effective 12/24/08

CHAPTER 66
Reserved

CHAPTER 67
ADMINISTRATION
[Prior to 1/1/96, see 701—Ch 63]

701—67.1(452A) Definitions. For purposes of this chapter, 701—Chapter 68, and 701—Chapter 69, the following definitions shall govern:

"Appropriate state agency" or *"state agency"* means the department of revenue or the state department of transportation, whichever is responsible for control, maintenance, or supervision of the power, requirement, or duty referred to in Iowa Code chapter 452A.

"Aviation gasoline" means any gasoline capable of being used for propelling aircraft which is invoiced as aviation gasoline or is received, sold, stored, or withdrawn from storage for purposes of propelling aircraft. It does not include motor fuel capable of being used for propelling motor vehicles.

"Biodiesel" means a renewable fuel comprised of mono-alkyl esters of long-chain fatty acids derived from vegetable oils or animal fats, which meets the standards provided in Iowa Code section 214A.2.

"Biodiesel blended fuel" means a blend of biodiesel with petroleum-based diesel fuel which meets the standards, including separately the standard for its biodiesel component, provided in Iowa Code section 214A.2.

"Biofuel" means ethanol or biodiesel.

"Blender" means a person who owns and blends ethanol with gasoline to produce ethanol blended gasoline and blends the product at a nonterminal location. The person is not restricted to blending ethanol with gasoline. Products blended with gasoline other than ethanol are taxed as gasoline. "Blender" also means a person blending two or more special fuel products at a nonterminal location where the tax has not been paid on all of the products blended. The blend is taxed as a special fuel.

"Carrier" means and includes any person who operates or causes to be operated any commercial motor vehicle on any public highway in this state.

"Common carrier" or *"contract carrier"* means a person involved in the movement of motor fuel or special fuel from the terminal or movement of the motor fuel or special fuel imported into this state, who is not an owner of the motor fuel or special fuel.

"Commercial motor vehicle" means a passenger vehicle that has seats for more than nine passengers in addition to the driver, any road tractor, any truck tractor, or any truck having two or more axles which passenger vehicle, road tractor, truck tractor, or truck is propelled on the public highways by either motor fuel or special fuel. "Commercial motor vehicle" does not include a motor truck with a combined gross weight of less than 26,000 pounds, operated as a part of an identifiable one-way fleet and which is leased for less than 30 days to a lessee for the purpose of moving property which is not owned by the lessor.

"Dealer" means a person, other than a distributor, who engages in the business of selling or distributing motor fuel or special fuel to the end user in this state.

"Denatured ethanol" means ethanol that is to be blended with gasoline, has been derived from cereal grains, complies with American Society of Testing Materials designation D-4806-95b, and may be denatured only as specified in Code of Federal Regulations, Titles 20, 21, and 27. Alcohol and denatured ethanol have the same meaning.

"Department" means the department of revenue.

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

"Distributor" means a person who acquires tax-paid motor fuel, special fuel, or alcohol from a supplier, restrictive supplier, or importer, or another distributor for subsequent sale at wholesale and distribution by tank cars or tank trucks or both. The department may require that the distributor be registered to have terminal purchase rights.

"E-85 gasoline" means ethanol blended gasoline formulated with a minimum percentage of between 70 and 85 percent by volume of ethanol, if the formulation meets the standards provided in Iowa Code section 214A.2.

"Eligible purchaser" means a distributor of motor fuel or special fuel who elects to make delayed payments to a licensed supplier and must use electronic funds transfer.

"End user" of special fuel means a person who has purchased a minimum of 240,000 gallons of special fuel each year in the two preceding years who elects to make delayed payments to a licensed supplier and must use electronic funds transfer.

"Ethanol" means ethyl alcohol that is to be blended with gasoline if the ethanol meets the standards provided in Iowa Code section 214A.2.

"Ethanol blended gasoline" means a formulation of gasoline which is a liquid petroleum product blended with ethanol, if the formulation meets the standards provided in Iowa Code section 214A.2. When "motor fuel" is used in these rules, it includes ethanol blended gasoline.

"Export" means delivery across the boundaries of this state by or for the seller or purchaser from a place of origin in this state.

"Exporter" means a person or other entity who acquires fuel in this state for export to another state.

"Foreign supplier" means a person licensed as a supplier to collect and report the tax, but who does not have jurisdictional connections with this state.

"Fuel(s)" means and includes both motor fuel and special fuel as defined in Iowa Code chapter 452A.

"Fuel taxes" means the per gallon excise taxes imposed under division I of Iowa Code chapter 452A with respect to motor fuel and undyed special fuel.

"Gasoline" means any liquid product prepared, advertised, offered for sale or sold for use as, or commonly and commercially used as, motor fuel for use in a spark-ignition, internal combustion engine, and which meets the specifications provided in Iowa Code section 214A.2.

"Import" means delivery across the boundaries of this state by or for the seller or purchaser from a place of origin outside this state.

"Importer" means a person who imports motor fuel or undyed special fuel in bulk or transport load into the state by truck, rail, or barge.

"Invoiced gallons" means gross gallons as shown on the bill of lading or manifest.

"Iowa urban transit system" means a system whereby motor buses are operated primarily upon the streets of cities for the transportation of passengers for an established fare and which accepts passengers who present themselves for transportation without discrimination up to the limit of the capacity of each motor bus. "Iowa urban transit system" also includes motor buses operated upon the streets of adjoining cities, whether interstate or intrastate, for the transportation of passengers without discrimination up to the limit of the capacity of the motor bus.

Privately chartered bus services, motor carriers and interurban carriers subject to the jurisdiction of the state department of transportation, school bus services, and taxicabs shall not be construed to be an urban transit system nor a part of any such system.

"Licensee" means a person holding an uncanceled supplier's, restrictive supplier's, importer's, exporter's, or blender's license issued by the department or any other person who possesses fuel for which the tax has not been paid.

"Mobile machinery and equipment" means vehicles self-propelled by an internal combustion engine but not designed or used primarily for the transportation of persons or property on public highways and only incidentally operated or moved over a highway including, but not limited to, corn shellers, truck-mounted feed grinders, roller mills, ditch-digging apparatus, power shovels, draglines, earth-moving equipment and machinery, and road construction and maintenance machinery such as asphalt spreaders, bituminous mixers, bucket loaders, ditchers, leveling graders, finishing machines, motor graders, paving mixers, road rollers, scarifiers, and earth-moving scrapers. However, "mobile machinery and equipment" does not include dump trucks or self-propelled vehicles originally designed for the transportation of persons or property on public highways and to which machinery, such as truck-mounted transit mixers, cranes, shovels, welders, air compressors, well-boring apparatus or lime spreaders, has been attached.

"Motor fuel" means a substance or combination of substances which is intended to be or is capable of being used for the purpose of operating an internal combustion engine, including but not limited to a motor vehicle, and is kept for sale or sold for that purpose and includes the following:

1. All products commonly or commercially known or sold as gasoline (including ethanol blended gasoline, casinghead, and absorption or natural gasoline) regardless of their classifications or uses, and including transmix which serves as a buffer between fuel products in the pipeline distribution process.

2. Any liquid advertised, offered for sale, sold for use as, or commonly or commercially used as a fuel for propelling motor vehicles, which when subjected to distillation of gasoline, naphtha, kerosene, and similar petroleum products (American Society of Testing Materials designation D-86), shows not less than 10 percent distilled (recovered) below 347° F (175° C) and not less than 95 percent distilled (recovered) below 464° F (240° C).

"Motor fuel" does not include special fuel and does not include liquefied gases which would not exist as liquids at a temperature of 60° F and a pressure of 14 7/10 pounds per square inch absolute, or naphthas and solvents unless the liquefied gases or naphthas and solvents are used as a component in the manufacture, compounding, or blending of a liquid within paragraph "2," in which event the resulting product shall be deemed to be motor fuel. "Motor fuel" also does not include methanol unless blended with other motor fuels for use in an aircraft or for propelling motor vehicles.

"Motor vehicle" means and includes all vehicles (except those operated on rails) which are propelled by internal combustion engines and are of such design as to permit their mobile use on public highways for transporting persons or property. A farm tractor while operated on a farm or for the purpose of hauling farm machinery, equipment, or produce shall not be deemed to be a motor vehicle. "Motor vehicle" shall not include "mobile machinery and equipment."

"Naphthas and solvents" means and includes those liquids which come within the distillation specifications for motor fuel, but which are designed and sold for exclusive use other than as a fuel for propelling motor vehicles.

"Non-ethanol blended gasoline" means gasoline other than ethanol blended gasoline.

"Nonterminal storage facility" means a facility where motor fuel or special fuel, other than liquefied petroleum gas, is stored that is not supplied by a pipeline or a marine vessel. "Nonterminal storage facility" includes a facility that manufactures products such as ethanol, biofuel, blend stocks, or additives which may be used as motor fuel or special fuel, other than liquefied petroleum gas, for operating motor vehicles or aircraft.

"Person" means and includes natural persons, partnerships, firms, associations, corporations, representatives appointed by any court, and political subdivisions of this state or any other group or combination acting as a unit and the plural as well as the singular number applies.

"Public highways" means and includes any way or place available to the public for purposes of vehicular travel notwithstanding temporarily closed.

"Racing fuel" means leaded gasoline of 110 octane or more that does not meet American Society of Testing Materials designation D-4814 for gasoline and is sold in bulk for use in nonregistered motor vehicles.

"Regional transit system" means a public transit system serving one county or all or part of a multicounty area whose boundaries correspond to the same boundaries as those of the regional planning areas designated by the governor, except as agreed upon by the department. Each county board of supervisors within the region is responsible for determining the service and funding within its county. However, the administration and overhead support services for the overall regional transit system shall be consolidated into one existing or new agency to be mutually agreed upon by the participating members. Privately chartered bus services and uses other than providing services that are open and public on a shared-ride basis shall not be construed to be a regional transit system.

"Restrictive supplier" means a person not otherwise licensed as an importer who imports motor fuel or undyed special fuel into this state in amounts of less than 4,000 gallons in tank wagons or in small tanks.

"Special fuel" means fuel oils, kerosene and all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles or turbine-powered aircraft, and includes any substance used for that purpose, except that it does not include motor fuel. Kerosene and methanol shall not be considered to be special fuels, unless the kerosene or methanol is blended with other special fuels for use in a motor vehicle with a diesel engine.

"Supplier" means a person who acquires motor fuel or special fuel by pipeline or marine vessel from a state, territory, or possession of the United States, or from a foreign country for storage at and distribution from a terminal and who is registered under 26 U.S.C. § 4101 for tax-free transactions in gasoline; a person who produces in this state or acquires by truck, railcar, or barge for storage at and distribution from a terminal, biofuel, biodiesel, alcohol, or alcohol derivative substances; or a person who produces, manufactures, or refines motor fuel or special fuel in this state. "Supplier" includes a person who does not meet the jurisdictional connection to this state but voluntarily agrees to act as a supplier for purposes of collecting and reporting the motor fuel or special fuel tax. "Supplier" does not include a retail dealer or wholesaler who merely blends alcohol with gasoline or biofuel with diesel before the sale or distribution of the product or a terminal operator who merely handles, in a terminal, motor fuel or special fuel consigned to the terminal operator.

"Taxpayer" means anyone responsible for paying fuel taxes directly to the department of revenue under Iowa Code chapter 452A.

"Terminal" means a motor fuel, alcohol, or special fuel storage and distribution facility that is supplied by a pipeline or a marine vessel and from which the fuel may be removed at a rack. "Terminal" does not include a facility at which motor fuel or special fuel blend stocks and additives are used in the manufacture of products other than motor fuel or special fuel and from which no motor fuel or special fuel is removed.

"Terminal operator" means the person who by ownership or contractual agreement is charged with the responsibility for, or physical control over, and operation of a terminal. If coventurers own a terminal, "terminal operator" means the person who is appointed to exercise the responsibility for, or physical control over, and operation of the terminal.

"Withdrawn from terminal" means physical movement from a supplier to a distributor or eligible end user or from an alcohol manufacturer to a nonterminal location and includes an importer going out of state and obtaining fuel from a terminal and bringing the fuel into the state, and a restrictive supplier bringing fuel into the state even though not purchased directly from a terminal. Exchange of product by suppliers while in the distribution channel and the physical movement of alcohol from an alcohol manufacturer to an Iowa licensed supplier's alcohol storage at a terminal are not to be considered "withdrawn from terminal."

This rule is intended to implement Iowa Code sections 452A.2 and 452A.59 as amended by 2008 Iowa Acts, Senate File 2400.

701—67.2(452A) Statute of limitations, supplemental assessments and refund adjustments. After a return is filed, the department must examine it, determine fuel taxes due, and give notice of assessment to the taxpayer. If no return is filed, the department may determine the tax due and give notice thereof. See rule 67.5(452A). The period for the examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade tax or in the case of a failure to file a return.

The department may, at any time within the period prescribed for assessment or refund adjustment, make a supplemental assessment or refund adjustment whenever it is ascertained that any assessment or refund adjustment is imperfect or incomplete in any respect.

If the assessment or refund adjustment is appealed (protested under rule 701—7.41(17A)) and is resolved whether by informal proceedings or by adjudication, the department and the taxpayer are precluded from making a supplemental assessment or refund adjustment concerning the same issue involved in such appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation.

The three-year period of limitation may be extended by a taxpayer by signing a waiver agreement form to be provided by the department. The agreement must stipulate the period of extension and must also provide that a claim for refund may be filed by the taxpayer at any time during the period of extension.

This rule is intended to implement Iowa Code section 452A.67 as amended by 1999 Iowa Acts, Senate File 136.

701—67.3(452A) Taxpayers required to keep records. The records required to be kept by this rule must be preserved for a period of three years and will be open for examination by the department during this period of time. The department, after an audit and examination of the records, may authorize the disposal of the records required to be kept upon written request by the taxpayer. For taxpayers using an electronic data interchange process or technology also see 701—subrule 11.4(4).

67.3(1) *Motor fuel and special fuel supplier.* Every supplier required to file a monthly return under Iowa Code section 452A.8 is required to keep and preserve the following records relating to the purchase or sale of fuel:

a. Copies of bills of lading or manifests.
b. Copies of sales invoices.
c. Sales records.
d. Copies of filed returns and supporting schedules.
e. Record of payment.
f. Export schedules.

67.3(2) *Restrictive supplier.* Every restrictive supplier required to file a monthly return under Iowa Code section 452A.8 is required to keep and preserve the following records relating to the purchase or sale of fuel:

a. Copies of bills of lading or manifests.
b. Purchase invoices.
c. Copies of sales invoices.
d. Purchase records.
e. Sales records.
f. Copies of filed returns and supporting schedules.
g. Record of payment.

67.3(3) *Importer.* Every importer required to file a semimonthly return under Iowa Code section 452A.8 is required to keep and preserve the following records relating to the purchase or sale of fuel:

a. Copies of bills of lading or manifests.
b. Purchase invoices.
c. Copies of sales invoices.
d. Purchase records.
e. Sales records.
f. Copies of filed returns and supporting schedules.
g. Record of payment.

67.3(4) *Exporter.* Every exporter is required to keep and preserve the following records relating to the purchase of fuel for export:

a. Copies of bills of lading or manifests.
b. Purchase invoices and purchase records.
c. Copies of reports, returns, and supporting schedules filed with the importing state.
d. Record of payment.

67.3(5) *Compressed natural gas and liquefied petroleum gas dealers and users.* Every compressed natural gas and liquefied petroleum gas dealer and user is required to keep and preserve the following records:

a. Copies of purchase invoice or bills of lading.
b. Copies of sales invoices and sales records.
c. Record of payment.
d. Exemption certificates.
e. Copies of filed returns and supporting schedules.

67.3(6) *Terminal or nonterminal storage facility operator.* Every person required to report under Iowa Code section 452A.15(2) or 2002 Iowa Acts, House File 2622, section 25, as an operator of a terminal or nonterminal storage facility shall keep and preserve the following records:

a. Records to evidence the acquisition of fuel.
b. Bills of lading or manifests covering the withdrawal of fuel.

c. Copies of filed reports and supporting schedules.

67.3(7) *Distributor.* Every distributor handling motor fuel or special fuel is required to preserve and keep the following records:

a. Delivery tickets.

b. Sales invoices.

c. Bills of lading.

d. Record of payment.

67.3(8) *Blender.* Every blender is required to keep and preserve the following records:

a. Purchase invoices for motor fuel, special fuel, and alcohol.

b. Bills of lading.

c. Copies of filed returns and supporting schedules.

d. Record of payment.

e. Copies of sales invoices.

67.3(9) *Dealer.* Every dealer (retailer) is required to keep and preserve the following records:

a. Purchase invoices.

b. Purchase records.

c. Delivery tickets.

d. Sales invoices.

e. Sales records.

f. Record of payment.

67.3(10) *Microfilm and related record systems.* Microfilm, microfiche, COM (computer on machine), and other related reduction in storage systems will be referred to as "microfilm" in this rule.

Microfilm reproductions of general books of account, such as a cash book, journals, voucher registers, and ledgers, are not acceptable other than those that have been approved by the Internal Revenue Service under Revenue Procedure 76-43, Section 3.02. However, microfilm reproductions of supporting records of detail, such as sales invoices and purchase invoices, may be allowed providing there is no administrative rule or Iowa Code section requiring the original and all of the following conditions are met and accepted by the taxpayer:

a. Appropriate facilities are provided to ensure the preservation and readability of the films.

b. Microfilm rolls are indexed, cross-referenced, labeled to show beginning and ending numbers or beginning and ending alphabetical listing of documents included, and are systematically filed.

c. The taxpayer agrees to provide transcripts of any information contained on microfilm which may be required for purposes of verification of tax liability.

d. Proper facilities are provided for the ready inspection and location of the particular records, including modern projectors for viewing and for the copying of records.

e. Any audit of "detail" on microfilm may be subject to sample audit procedures, to be determined at the discretion of the director or the director's designated representative.

f. A posting reference must be on each invoice.

g. Documents necessary to support claimed exemptions from tax liability, such as bills of lading and purchase orders, must be maintained in an order by which they readily can be related to the transaction for which exemption is sought.

67.3(11) *Automatic data processing records.* Automatic data processing (ADP) is defined in this rule as including electronic data processing (EDP) and will be referred to as ADP.

a. An ADP tax accounting system must have built into its program a method of producing visible and legible records which will provide the necessary information for verification of the taxpayer's tax liability.

b. ADP records must provide an opportunity to trace any transaction back to the original source or to a final total. If detailed printouts are not made of transactions at the time they are processed, then the system must have the ability to reconstruct these transactions.

c. A general ledger with source references will be produced as hard copy to coincide with financial reports of tax reporting periods. In cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers should also be produced periodically.

d. Supporting documents and audit trail. The audit trail should be designed so that the details underlying the summary accounting data may be identified and made available to the director or the director's designated representative upon request. The system should be designed so that the supporting documents, such as sales invoices and purchase invoices, are readily available. (An audit trail is defined as the condition of having sufficient documentary evidence to trace an item from source, such as invoice or payment, to a financial statement or tax return or report; or the reverse, that is, to have an auditable system.)

e. Program documentation. A description of the ADP portion of the accounting program should be available. The statements and illustrations as to the scope of operations should be sufficiently detailed to indicate:

(1) The application being performed;

(2) The procedure employed in each application (which, for example, might be supported by flow charts, block diagrams or other satisfactory description of the input or output procedures); and

(3) The controls used to ensure accurate and reliable processing. Program and systems changes, together with their effective dates, should be noted in order to preserve an accurate chronological record.

f. Storage of ADP output will be in appropriate facilities to ensure preservation and readability of output.

67.3(12) *Electronic data interchange or EDI technology.* The purpose of this subrule is to adopt the "Model Recordkeeping and Retention Regulation" report as promulgated by the Federation of Tax Administrators' Steering Committee Task Force on EDI Audit and Legal Issues for Tax Administration (March 1996). This subrule defines the requirements imposed on taxpayers for the maintenance and retention of books, records, and other sources of information under Iowa Code sections 452A.10, 452A.12, 452A.55, 452A.60, 452A.62, 452A.69, 452A.76, and 452A.80. It is also the purpose of this subrule to address these requirements where all or part of a taxpayer's records are received, created, maintained, or generated through various computer, electronic, and imaging processes and systems. A taxpayer must maintain all records that are necessary for determination of the correct tax liability as set forth in this subrule and the other subrules within rule 701—67.3(452A). Upon request, all required records must be made available to the department or its authorized representatives as provided in Iowa Code sections 452A.10 and 452A.62. If a taxpayer retains records required to be retained under this subrule in both machine-sensible and hard-copy formats, the taxpayer must make the records available to the department in machine-sensible format upon request of the department. Nothing in this subrule will be construed to prohibit a taxpayer from demonstrating tax compliance with traditional hard-copy documents or reproductions thereof, in whole or in part, whether or not the taxpayer also has retained or has the capability to retain records on electronic or other storage media in accordance with this subrule. However, as previously stated, this will not relieve a taxpayer of the obligation to comply with the requirement to make records available to the department.

a. Definitions. The following definitions are applicable to this subrule:

"Database management system" means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

"Electronic data interchange" or *"EDI technology"* means the computer-to-computer exchange of business transactions in a standardized, structured electronic format.

"Hard copy" means any documents, records, reports, or other data printed on paper.

"Machine-sensible record" means a collection of related information in an electronic format. Machine-sensible records do not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems.

"Storage-only imaging system" means a system of computer hardware and software that provides for the storage, retention, and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hard copy or as an optical image.

"Taxpayer" as used in this subrule means any person, business, corporation, fiduciary, or other entity that is required to file a return or report with the department of revenue.

b. Record-keeping requirements — machine-sensible records. A taxpayer that maintains and retains books, records, and other sources of information in the form of machine-sensible records must comply with the following:

(1) General requirements. A taxpayer must comply with the following general requirements regarding the retention of machine-sensible records:

1. Machine-sensible records used to establish tax compliance must contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the department upon request. A taxpayer has discretion to discard duplicated records and redundant information provided its responsibilities under this regulation are met.

2. At the time of an examination, the retained records must be capable of being retrieved and converted to a standard record format. The term "standard record format" does not mean that every taxpayer must keep records in an identical manner. Instead, it requires that if a taxpayer utilizes a code system to identify elements of information in each record when creating and maintaining records, the taxpayer is required to maintain a record of the meaning of each code and any code changes so that the department may effectively review the taxpayer's records.

3. Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer that does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct a traditional paper document for tax purposes.

(2) Electronic data interchange requirements. A taxpayer must comply with the following requirements for records received through electronic data interchange:

1. Where a taxpayer uses an electronic data interchange process and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. For example, for motor fuel tax purposes the retained records should contain the following minimal information: bills of lading or manifests; invoices; sales and purchase records; returns, reports, and supporting schedules; records of payments; export schedules; exemption certificates; and delivery tickets. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method which allows the department to interpret the coded information.

2. The taxpayer may capture the information necessary to satisfy the requirements set forth in the preceding paragraph at any level within the accounting system and need not retain the original EDI transaction records provided that the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using electronic data interchange technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system captures information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the taxpayer also retains the other records such as its vendor master file and product code description lists and makes them available to the department. In this example, the taxpayer need not retain its original EDI transaction for tax purposes.

(3) Electronic data processing accounting systems requirements. The requirements for an electronic data processing accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this rule. In addition, pursuant to Iowa Code sections 452A.10, 452A.12, 452A.55, 452A.60, 452A.62, 452A.69, 452A.76, and 452A.80, the department must have access to the taxpayer's EDI processing, accounting, or other systems for the purposes of verifying or evaluating the integrity and reliability of those systems to provide accurate and complete records.

(4) Business process information. To verify the accuracy of the records being retained, the taxpayer must comply with the following:

1. Upon the request of the department, the taxpayer shall provide a description of the business process that created the retained records. The description must include the relationship between the records and the tax documents prepared by the taxpayer and include the measures employed to ensure the integrity of the records.

2. The taxpayer must be capable of demonstrating the following:

- The functions being performed as they relate to the flow of data through the system;
- The internal controls used to ensure accurate and reliable processing; and
- The internal controls used to prevent unauthorized addition to, alteration of, or deletion of retained records.

3. The following specific documentation is required for machine-sensible records retained pursuant to this rule:

- Record formats or layouts;
- Field definitions (including a record of any changes in the system or codes and the meaning of all codes used to represent information);
- File descriptions (e.g., data set name); and
- Detailed charts of accounts and account descriptions.

c. Record maintenance requirements. The department recommends, but does not require, that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records such as the labeling of records, the location and security of the storage environment, the creation of backup copies, and the use of periodic testing to confirm the continued integrity of the records. (The NARA standards may be found at 36 Code of Federal Regulations, Part 1234, July 1, 1995, Edition.) The taxpayer's computer hardware and software must accommodate the extraction and conversion of retained machine-sensible records.

d. Access to machine-sensible records. If a taxpayer retains records required to be retained under this regulation in both machine-sensible and hard-copy formats, the taxpayer must make the records available to the department in machine-sensible format upon the request of the department.

(1) The manner in which the department is provided access to machine-sensible records may be satisfied through a variety of means that must take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

(2) Access shall be provided in one or more of the following manners:

1. The taxpayer may arrange to provide the department with the hardware, software, and personnel resources to access the machine-sensible records.

2. The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.

3. The taxpayer may convert the machine-sensible records to a standard record format specified by the department, including copies of files, on magnetic medium that is agreed to by the department.

4. The taxpayer and the department may agree on other means of providing access to the machine-sensible records.

e. Taxpayer's responsibility and discretionary authority. In conjunction with meeting the requirements of paragraph *"b"* of this subrule, a taxpayer may create files solely for the use of the department. For example, if a database management system is used, it is consistent with this subrule for the taxpayer to create and retain a file that contains the transaction-level detail from the database management system and that meets the requirements of paragraph *"b"* of this subrule. The taxpayer shall document the process that created the separate file to show the relationship between that file and the original records. A taxpayer may contract with a third party to provide custodial or management services of the records. Such a contract will not relieve the taxpayer of its responsibilities under this rule.

f. Alternative storage media. For purposes of storage and retention, taxpayers may convert hard-copy documents received or produced in the normal course of business and required to be retained under this rule to microfilm, microfiche, or other storage-only imaging systems and may discard the original hard-copy documents provided that the rules governing alternative storage media are met. For details regarding alternative storage, see subrule 67.3(9), "Microfilm and related record systems."

g. Effect on hard-copy record-keeping requirements. Except as otherwise provided, the provisions of this subrule do not relieve taxpayers of the responsibility to retain hard-copy records that are created or received in the ordinary course of business as required by existing law and rules. Hard-copy records may be retained on alternative storage media as indicated in paragraph *"f"* above and subrule 67.3(9).

If hard-copy records are not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), hard-copy records need not be created.

Hard-copy records generated at the time of the transaction with the use of a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this rule.

Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

Nothing in this rule shall prevent the department from requesting hard-copy printouts in lieu of retained machine-sensible records at the time of examination.

67.3(13) *General requirements.* If a tax liability has been assessed and an appeal is pending to the department, state board of tax review, or district or supreme court, books, papers, records, memoranda, or documents specified in this rule which relate to the period covered by the assessment must be preserved until the final disposition of the appeal.

If the requirements of this rule are not met, the records will be considered inadequate and rule 67.5(452A), estimate gallonage, applies.

This rule is intended to implement Iowa Code sections 452A.6 and 452A.15 as amended by 2002 Iowa Acts, House File 2622, and sections 452A.8, 452A.9, 452A.10, 452A.17, 452A.59, 452A.60, 452A.62, and 452A.69.

701—67.4(452A) Audit—costs. The department has the right and duty to examine or cause to be examined the books, records, memoranda, or documents of a taxpayer for the purpose of verifying the correctness of a return filed or determining the tax liability of any taxpayer. The costs incurred in examining the records of a taxpayer are at the taxpayer's expense when the records are kept at an out-of-state location. Cost will include meals, lodging, and travel expenses, but will not include salaries of department personnel. (See 1976 O.A.G. 611.)

This rule is intended to implement Iowa Code section 452A.10 and 452A.62 as amended by 1995 Iowa Acts, chapter 155, and Iowa Code sections 452A.55 and 452A.69.

701—67.5(452A) Estimate gallonage. It is the duty of the department to collect all taxes on fuel due the state of Iowa. In the event the taxpayer's records are lacking or inadequate to support any return filed by the taxpayer, or to determine the taxpayer's liability, the department has the power to estimate the gallonage upon which tax is due. This estimation will be based upon such factors as, but not limited to, the following: (1) prior experience of the taxpayer, (2) taxpayers in similar situations, (3) industry averages, (4) records of suppliers or customers, and (5) other pertinent information the department may possess, obtain or examine.

This rule is intended to implement Iowa Code section 452A.64.

701—67.6(452A) Timely filing of returns, reports, remittances, applications, or requests. The returns, reports, remittances, applications, or requests required under Iowa Code chapter 452A shall be deemed filed within the required time if (1) postpaid, (2) properly addressed, and (3) postmarked on or before midnight of the day on which due and payable. Any return that is not signed and any return which does not contain substantially all of the pertinent information are not considered "filed" until such time as the taxpayer signs or supplies the information to the department. *Miller Oil Company v. Abrahamson*, 252 Iowa 1058, 109 N.W.2d 610 (1961), *Severs v. Abrahamson*, 255 Iowa 979, 124 N.W.2d 150 (1963). The filing of a return within the period prescribed by law and payment of the tax required to be shown thereon are simultaneous acts, unless remittance is required to be transmitted electronically; and if either condition is not met, a penalty will be assessed. Remittances transmitted electronically are considered to have been made on the date the remittance is added to the bank account designated by the treasurer of the state of Iowa. If the final filing date falls on a Saturday, Sunday, or legal holiday, the next secular or business day is the final filing date. The director may require by rule that reports and returns be filed by electronic transmission. Effective for returns due after July 1, 2006, all licensees must file returns by electronic transmission. All suppliers, restricted suppliers,

importers, terminals, blenders, and nonterminal storage facilities with at least 5,000 gallons of product on their return or report must also file the schedules which support the return or report by electronic transmission.

All returns, reports, remittances, applications, or requests should be mailed to: Iowa Department of Revenue, Motor Fuel Unit, Hoover State Office Building, Des Moines, Iowa 50319, unless electronic transmission is required.

In the event a dispute arises as to the time of filing, or a return, report, or remittance is not received by the department, the provisions of Iowa Code section 622.105 are controlling. This rule applies only when the document is not received or the postmark on the envelope is illegible, erroneous, or omitted.

This rule is intended to implement Iowa Code sections 452A.8 and 452A.61.

701—67.7(452A) Extension of time to file. The department may grant an extension for the filing of any required return or tax payment or both.

In order for an extension to be granted, the application requesting the extension must be filed, in writing, with the department prior to the due date of the return or remittance. In determining whether an application for extension is timely filed, the provisions of rule 67.6(452A) shall apply. The application for extension must be accompanied by an explanation of the circumstances justifying such extension, and in no event will the extension period exceed 30 days.

In the event an extension is granted, the penalties under Iowa Code section 452A.65 applicable to late-filed returns or remittances will not accrue until the expiration of the extension period, but the interest on tax due under the same section will accrue as of the original filing date.

This rule is intended to implement Iowa Code section 452A.61.

701—67.8(452A) Penalty and interest. See rules 701—10.6(421) and 701—10.2(421) for failure to timely file a return or for failure to timely pay the tax. See rule 701—10.8(421) for penalty exceptions. See rule 701—10.72(452A) for interest on refunds.

701—67.9(452A) Penalty and enforcement provisions. See rule 701—10.71(421).

701—67.10(452A) Application of remittance. All payments are to be first applied to the penalty and then to the interest, and the balance, if any, to the amount of tax then due. If a taxpayer remits a payment on or before the due date, but the payment is insufficient to discharge the tax liability, the entire amount of the payment applies to the tax, and the penalty and interest are based on the unpaid portion of the tax. If the department determines there is additional tax due from a taxpayer, interest and penalty shall accrue on that amount from the date it should have been reported and paid.

This rule is intended to implement Iowa Code section 452A.59 as amended by 1995 Iowa Acts, chapter 155, and Iowa Code sections 452A.65 and 452A.66.

701—67.11(452A) Reports, returns, records—variations. The department will prescribe and furnish forms upon which reports, returns, and applications are to be made to the department under Iowa Code chapter 452A. Claims for refund will be made on forms provided by the department or in any other manner as prescribed by the director. Licensees may substitute forms for their use, other than official forms, if all the requirements in department rule 701—8.3(17A) are met.

If the information required in these documents is presented to the department on forms or in a manner other than the prescribed form, or approved substitute form, the return, application, or claim for refund or credit shall not be deemed "filed." The forms may be furnished by the department (except those pertaining to division III interstate operations which are available from the department of transportation) and, therefore, the fact that the reporting party does not have the prescribed form is not an excuse for failure to file.

The department may also prescribe the form of the records which the reporting parties are required to keep in support of the reports/returns they file. The department may approve the form of the records which are being kept by any reporting party and must approve the form of record being kept if that form contains all of the information on the prescribed form, the information is compiled in such a manner as

to make it easily ascertainable by department personnel, and substantially complies with the prescribed form.

This rule is intended to implement Iowa Code section 452A.60 as amended by 1999 Iowa Acts, Senate File 136.

701—67.12(452A) Form of invoice. Whenever an invoice is required to be kept or prepared by Iowa Code chapter 452A, the invoice must:

1. Be prepared by someone other than the purchaser and include the seller's name, address, and identification number.
2. Include the purchaser's name and address.
3. Contain a serial number of three or more digits.
4. Include the calendar date of purchase.
5. Indicate the type of fuel purchased. Diesel fuel must be designated as dyed or undyed.
6. Indicate the quantity of fuel purchased in gross gallons.
7. Indicate the total purchase price and show separately the amount of state and federal fuel tax included in the purchase price or include a statement that all state and applicable federal taxes are included in the purchase price.
8. Be prepared on paper which will prevent erasure or alteration or on another form approved by the department.

This rule is intended to implement Iowa Code sections 452A.10 and 452A.60 as amended by 1995 Iowa Acts, chapter 155.

701—67.13(452A) Credit card invoices. Credit card invoices are acceptable if they meet substantially all the requirements of rule 67.12(452A). (1968 O.A.G. 592)

For refund purposes, presentation of a credit card invoice or billing statement is prima facie evidence that the fuel tax has been paid.

This rule is intended to implement Iowa Code section 452A.60 as amended by 1995 Iowa Acts, chapter 155.

701—67.14(452A) Original invoice retained by purchaser—certified copy if lost. Whenever an invoice is required to be kept under Iowa Code chapter 452A, it must be the original copy which is kept. If the original copy is either lost or destroyed, a copy, certified by the seller as being a true copy of the original, will be acceptable. A copy of any invoice which is required to be kept by the purchaser must be kept by the seller for the same period of time.

This rule is intended to implement Iowa Code sections 452A.10 and 452A.60 as amended by 1995 Iowa Acts, chapter 155.

701—67.15(452A) Taxes erroneously or illegally collected. Licensees, including licensed suppliers, restrictive suppliers, importers, and blenders, are entitled to a return of taxes, penalty, and interest erroneously or illegally collected by the department. The request for the return of the taxes must be (1) in writing, (2) filed with the department within one year of the time the tax was paid if paid prior to July 1, 2002, and within three years of the time the tax was paid if the tax was paid on or after July 1, 2002, (3) filed by the licensee who remitted the tax to the department, and (4) accompanied by documentation supporting the claim for refund. If the erroneous collection was the result of a computational error on the part of the taxpayer and that error is discovered by the department during an examination of the taxpayer's records within three years of the overpayment, the taxes will be refunded and a written request will not be necessary. If the request includes the return of erroneously or illegally collected (assessed) penalty or interest, the interest or penalty shall be refunded in the same proportion as the tax. A refund requested under Iowa Code section 452A.72 will be reduced by sales tax if applicable. There is no minimum refund amount for refunds claimed under the provisions of Iowa Code section 452A.72. See sales tax rule 701—18.37(422,423).

67.15(1) Motor fuel and undyed special fuel suppliers must inform the department upon which bill(s) of lading, by number, and upon which monthly return(s) the tax was erroneously paid. The gallonage upon which a refund is requested on motor fuel or undyed special fuel must be reduced by the distribution allowance provided in Iowa Code section 452A.5. An amended return must be filed for the tax period in which the error occurred.

67.15(2) Restrictive suppliers, importers, and blenders must inform the department upon which bill(s) of lading or invoice, by number, and upon which monthly or semimonthly return(s) the tax was erroneously paid and an explanation of the erroneous payment. An amended return must be filed for the tax period in which the error occurred.

This rule is intended to implement Iowa Code section 452A.72 as amended by 2002 Iowa Acts, Senate File 2305.

701—67.16(452A) Credentials and receipts. Employees of the department have official credentials, and the taxpayer should require proof of the identity of persons claiming to represent the department. No charges are to be made nor gratuities of any kind accepted by an employee of the department for assistance given in or out of the office of the department.

All employees authorized to collect money are supplied with official receipt forms. When cash is paid to an employee of the department, the taxpayer should require the employee to issue an official receipt. Such receipt must show the taxpayer's name, address, and permit or license number; the purpose of the payment; and the amount of the payment. The taxpayer should retain all receipts, and the only receipts which the department will accept as evidence of a cash payment are the official receipts.

This rule is intended to implement Iowa Code section 452A.59 as amended by 1995 Iowa Acts, chapter 155.

701—67.17(452A) Information confidential. Iowa Code section 452A.63, which makes all information obtained from reports, returns, or records required to be filed or kept under Iowa Code chapter 452A confidential, applies generally to the director, deputies, auditors, agents, officers, or other employees of the department. The information may be divulged to the appropriate public officials enumerated in Iowa Code section 452A.63. These public officials include (1) member(s) of the Iowa General Assembly, (2) committees of either house of the Iowa legislature, (3) state officers, (4) persons who have responsibility for the enforcement of Iowa Code chapter 452A, (5) officials of the federal government entrusted with enforcement of federal motor vehicle fuel tax laws, and (6) officials of other states who have responsibility to enforce motor vehicle fuel tax laws and who will furnish like information to the department. An exception to this rule is that the appropriate state agency may make available to the public the total gallons of motor fuel, undyed special fuel, and ethanol-blended gasoline withdrawn from terminals or imported into the state by suppliers, restrictive suppliers, and importers. The public request must be made within 45 days following the last day of the month in which the tax is required to be paid. See rule 701—6.3(17A) for procedures for requesting information.

This rule is intended to implement Iowa Code section 452A.63 as amended by 1999 Iowa Acts, Senate File 136.

701—67.18(452A) Delegation to audit and examine. Pursuant to statutory authority, the director of revenue delegates to the coadministrators of the compliance division the power to examine reports, returns, and records, make audits, and determine the correct amount of tax, interest, penalties, and fines due, and to take all actions authorized to collect the same, subject to review by or appeal to the director of revenue. The power so delegated may further be delegated by the coadministrators of the division to auditors, clerks, examiners, and employees of the division.

This rule is intended to implement Iowa Code sections 452A.62 and 452A.76.

701—67.19(452A) Practice and procedure before the department of revenue. The practice and procedure before the department is governed by Iowa Code chapter 17A and 701—Chapter 7.

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

701—67.20(452A) Time for filing protest. Any person wishing to contest an assessment, denial of all or any portion of a refund claim, or any other department action, except licensing, which may culminate in a contested case proceeding, must file a protest with the clerk of the hearings section for the department pursuant to rule 701—7.41(17A) within 60 days of the issuance of the assessment, denial, or other department action contested. If a taxpayer failed to timely appeal a notice of assessment, the taxpayer may make payments pursuant to rule 701—7.41(17A) and file a refund claim within the period provided by law for filing claims.

This rule is intended to implement Iowa Code section 452A.64.

701—67.21(452A) Bonding procedure. The director may, when necessary and advisable in order to secure the collection of the tax, require any person subject to the tax to file with the department a bond in an amount as the director may fix, or in lieu of the bond, securities approved by the director in an amount as the director may prescribe. Pursuant to the statutory authorization in Iowa Code sections 422.52(3) and 452A.66, the director has determined that the following procedures will be instituted with regard to bonds:

67.21(1) *When required.*

a. Classes of business. When the director determines, based on departmental records, other state or federal agency statistics, or current economic conditions, that certain segments of the petroleum business community are experiencing above average financial failures such that the collection of the tax might be jeopardized, a bond or security will be required from every licensee operating a business within this class unless it is shown to the director's satisfaction that a particular licensee within a designated class is solvent and that the licensee previously timely remitted the tax. If the director selects certain classes of licensees for posting a bond or security, rule making will be initiated to reflect a listing of the classes in the rules.

b. New applications for fuel tax permits. Notwithstanding the provisions of paragraph *"a"* above, the director has determined that importers will be required to post a bond in the amount of $25,000 and other applicants for a new fuel tax permit will be requested to post a bond or security if (1) it is determined upon a complete investigation of the applicant's financial status that the applicant would likely not be able to timely remit the tax, or (2) the new applicant held a prior fuel tax license and the remittance record of the tax under the prior license falls within one of the conditions in paragraph *"c"* below, or (3) the department experienced collection problems while the applicant was engaged in business under the prior license, or (4) the applicant is substantially similar to a person who would have been required to post a bond under the guidelines as set forth in *"c"* or such person had a previous fuel tax permit revoked. The applicant is "substantially similar" to the extent that said applicant is owned or controlled by persons who owned or controlled the previous licensee. For example, X, a corporation, had a previous fuel tax permit revoked. X is dissolved and its shareholders create a new corporation, Y, which applies for a fuel tax permit. The persons or stockholders who controlled X now control Y. Therefore, Y will be requested to post a bond or security.

c. Existing licensees—amount of bond or security. The simultaneous late filing of the return and the late payment of the tax will count as one delinquency. See rule 701—67.24(452A). However, the late filing of the return or the late payment of the tax will not count as a delinquency if the license holder can satisfy one of the conditions set forth in Iowa Code section 421.27, penalty waiver.

(1) Suppliers will be requested to post a bond or security when they have had one or more delinquencies in remitting the fuel tax or timely filing monthly returns during the past six months.

The bond or security will be an amount sufficient to cover six months' fuel tax liability or $5,000, whichever is greater.

(2) Restrictive suppliers will be requested to post a bond or security when they have had two or more delinquencies in remitting the fuel tax or timely filing monthly returns during the past 12 months.

The bond or security will be an amount sufficient to cover 12 months' fuel tax liability or $2,000, whichever is greater.

(3) Blenders will be requested to post a bond or security when they have had two or more delinquencies in remitting the fuel tax or timely filing monthly returns during the past six months.

The bond or security will be an amount sufficient to cover 12 months' fuel tax liability or $2,000, whichever is greater.

(4) L.P.G. and C.N.G. dealers and users will be requested to post a bond or security when they have had two or more delinquencies in remitting the fuel tax or timely filing monthly returns during the past 12 months. The bond or security will be an amount sufficient to cover 12 months' fuel tax liability or $500, whichever is greater.

d. Eligible purchasers and end users will be required to post a bond or security when they have failed to pay the tax to a supplier. They will not be allowed to register as an eligible purchaser or end user again until the bond or security requirement has been complied with.

The bond or security will be an amount sufficient to cover six months' fuel tax based on previous purchases.

e. Waiver of bond. If a licensee has been requested to post a bond or security or if an applicant for a license has been requested to post a bond or security, upon the filing of the bond or security if the licensee maintains a good filing record for a period of two years, the licensee may request that the department waive the continued bond or security requirement. Importer bonds will not be waived.

67.21(2) *Type of security or bond.* When it is determined that a licensee or applicant for a fuel tax permit is required to post collateral to secure the collection of the fuel tax, the following types of collateral will be considered as sufficient: cash, surety bonds, securities, or certificates of deposit. "Cash" means guaranteed funds including, but not limited to, cashier's check, money order, or certified check. If cash is posted as a bond, the bond will not be considered filed until the final payment is made, if paid in installments. A certificate of deposit must have a maturity date of 24 months from the date of assignment to the department. An assignment from the bank must accompany the original certificate of deposit filed with the department for the bank to be released from liability. When a licensee elects to post cash rather than a certificate of deposit as a bond, conversion to a certificate of deposit will not be allowed. When the licensee is a corporation, an officer of the corporation may assume personal responsibility for the payment of fuel tax. Security requirements for the officer will be evaluated as provided in 67.21(1) above as if the officer applied for a fuel tax license as an individual.

This rule is intended to implement Iowa Code sections 422.52(3) and 452A.66.

701—67.22(452A) Tax refund offset. The department may apply any fuel tax refund against any other liability outstanding.

This rule is intended to implement Iowa Code sections 452A.17 and 421.17.

701—67.23(452A) Supplier, restrictive supplier, importer, exporter, blender, dealer, or user licenses.

67.23(1) *Requirements for license.* In order to become licensed as a fuel supplier, restrictive supplier, importer, exporter, blender, dealer, or user, the person must file a written application with the department. The license is valid until revoked or canceled, and is nonassignable. The application is to include, but not be limited to, the following information:

a. The name under which the licensee will transact business in the state.

b. The location of the principal place of business of the licensee and the mailing address if different.

c. The social security number or federal identification number of the licensee.

d. The type of ownership.

e. The name and complete residency address of the owner(s) of the business or, if a corporation or association, the names and addresses of the principal officers.

f. The type of license being requested.

g. Exporters only — the state and license number for that state in which the fuel is being exported.

h. The signature of the person making the application. For electronically transmitted applications, the application form shall state that, in lieu of the person's handwritten signature, the person's E-mail address or the person's fax signature will constitute a valid signature.

67.23(2) *Assignment of a license.* The following are nonexclusive situations that are considered assignments, and the acquiring person must apply for a new license.

a. A sale of the taxpayer's business, even if the new owner operates under the same name.

b. A change of the name under which the licensee conducts business.

c. A merger or other business combination which results in a new or different entity.

67.23(3) *Denial of a license.* The department may deny a license to any applicant who is, at the time of application, substantially delinquent in paying any tax due which is administered by the department or the interest or penalty on the tax and will deny a permit of an individual if the department has received a certificate of noncompliance from the child support recovery unit in regard to an individual. If the applicant is a partnership, a license may be denied if a partner is substantially delinquent in paying any tax, penalty, or interest regardless of whether the tax is in any way a liability of or associated with the partnership. If an applicant for a license is a corporation, the department may deny the applicant a license if any officer with a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax, penalty, or interest of the applicant corporation. See rule 701—13.16(422) for a characterization of the terms "tax administered by the department" and "substantially delinquent" in paying a tax. If the application for a license is denied, see rule 701—7.55(17A) for rights to appeal.

67.23(4) *Revocation of a license.* The department may revoke the license of any licensee who becomes substantially delinquent in paying any tax which is administered by the department or the interest or penalty on the tax and will revoke a license of an individual if the department has received a certificate of noncompliance from the child support recovery unit in regard to an individual. If a licensee is a corporation, the department may revoke the license if any officer with a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax, penalty, or interest of the applicant corporation. If the licensee is a partnership, the license may not be revoked for a partner's substantial delinquency in paying any tax, penalty, or interest which is not a liability of the partnership. See rule 701—13.16(422) for characterizations of the terms "tax administered by the department" and "substantially delinquent" in paying a tax. The department may also revoke the license of any licensee who abuses the privileges for which the license was issued, who files a false return, or who fails to file a return (including supporting schedules), pay the full amount of tax due, produce records requested, or extend cooperation to the department. See rule 701—7.55(17A) for rights to appeal.

67.23(5) *Efficient administration of motor fuel laws.* When in the opinion of the director it is necessary for the efficient administration of Iowa Code chapter 452A, the director may regard persons or facilities in possession of motor fuel, special fuel, biofuel, alcohol, or alcohol derivative substances as blenders, dealers, eligible purchasers, exporters, importers, restrictive suppliers, suppliers, terminal operators, or nonterminal storage facility operators. The department will notify the person or facility of the various requirements under the motor fuel tax laws and will ensure that a license is issued.

This rule is intended to implement Iowa Code sections 452A.4 and 452A.6.

701—67.24(452A) Reinstatement of license canceled for cause. A license canceled for cause will be reinstated only on such terms and conditions as the cause may warrant. Terms and conditions will include payments of any applicable fuel tax liability including interest and penalty which is due the department.

Pursuant to the director's statutory authority in Iowa Code section 452A.68 to restore licenses after being canceled for cause, the director has determined that upon the cancellation of a motor vehicle fuel tax license the initial time, the licensee will be required to pay all delinquent fuel tax liabilities including interest and penalty, to file returns, and to post a bond and have refrained from activities requiring a license under sections 452A.4 and 452A.6 during the waiting period as required by the director prior to the reinstatement or issuance of a new motor vehicle fuel tax license.

As set forth above, the director may impose a waiting period during which the licensee must refrain from activities requiring a license pursuant to the penalties provided in Iowa Code section 452A.74 for a period not to exceed 90 days as a condition for the restoration of a license or the issuance of a new license after cancellation for cause. The department may require a statement that the licensee has fulfilled all requirements of said order canceling the license for cause and the dates on which the license holder refrained from restricted activities.

Each of the following situations will be considered one offense for the purpose of determining the waiting period to reinstate a license canceled for cause or issuing a new license after being canceled for cause unless otherwise noted.

Failure to post a bond as required.

Failure to file a report or return timely.

Failure to pay tax timely (including unhonored payments, failure to pay and late payments).

Failure to file a return and pay tax as shown on the return (counts as one offense).

The hearing officer or director of revenue may order a waiting period after the cancellation for cause not to exceed:

Five days for one through five offenses.

Seven days for six or seven offenses.

Ten days for eight or nine offenses.

Thirty days for ten offenses or more.

The hearing officer or director of revenue may order a waiting period not to exceed:

Forty-five days if the second cancellation for cause occurs within 24 months of the first cancellation for cause.

Sixty days if the second cancellation for cause occurs within 18 months of the first cancellation for cause.

Ninety days if the second cancellation for cause occurs within 12 months of the first cancellation for cause.

Ninety days if the third cancellation for cause occurs within 36 months of the second cancellation for cause. See 701—subrule 7.24(1) for rights to appeal.

This rule is intended to implement Iowa Code section 452A.68 as amended by 1999 Iowa Acts, Senate File 136.

701—67.25(452A) Fuel used in implements of husbandry. Dyed special fuel is exempt from tax. Motor fuel or undyed special fuel is subject to refund when used in implements of husbandry as defined in Iowa Code section 321.1(32). A vehicle as defined in Iowa Code section 321.1(90) is not an implement of husbandry. The department of revenue, the state department of transportation, the department of public safety, and any other peace officer as requested by such department is empowered to enforce the use of special fuel or motor fuel in any illegal manner, including the inspection and testing of fuel in the fuel supply tank of an implement of husbandry.

This rule is intended to implement Iowa Code section 452A.76 as amended by 1995 Iowa Acts, chapter 155.

701—67.26(452A) Excess tax collected. If a licensee collects tax on exempt fuel or collects more tax than is due, the licensee must return the excess tax paid to the purchaser if the tax has not been paid to the department. If the tax has been paid to the department, the department will return the excess tax paid to the consumer upon appropriate documentation.

This rule is intended to implement 1999 Iowa Acts, Senate File 136, section 66.

701—67.27(452A) Retailer gallons report. The department is required to compile information reported to it by retail dealers regarding the number of gallons of the various fuel classifications sold by retail dealers in the previous calendar year and submit a report to the governor and the legislative services agency by April 1 of each year. Each retail dealer is required to file a report with the department detailing the number of gallons sold during the previous calendar year as required by the department. The retail dealer report is due by January 31 following the close of the calendar year.

The report filed by the department will include information in the aggregate relating to total sales of gasoline, ethanol blended gasoline, diesel fuel and biofuels. The report will also include appropriate

percentage sales of various fuel products. The report will not include individual retail dealer information, trade secret information or confidential information.

This rule is intended to implement Iowa Code section 452A.33(2) as amended by 2008 Iowa Acts, Senate File 2400.

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CHAPTER 68
MOTOR FUEL AND UNDYED SPECIAL FUEL
[Prior to 1/1/96, see 701—Ch 64]

701—68.1(452A) Definitions. See 701—67.1(452A).

701—68.2(452A) Tax rates—time tax attaches—responsible party.

68.2(1) The following rates of tax apply to the use of fuel in operating motor vehicles and aircraft:

Gasoline	20.3¢ per gallon (for July 1, 2003, through June 30, 2004)
	20.5¢ per gallon (for July 1, 2004, through June 30, 2005)
	20.7¢ per gallon (for July 1, 2005, through June 30, 2006)
	21¢ per gallon (for July 1, 2006, through June 30, 2007)
	20.7¢ per gallon (for July 1, 2007, through June 30, 2008)
	21¢ per gallon (for July 1, 2008, through June 30, 2009)
LPG	20¢ per gallon
Ethanol blended gasoline	19¢ per gallon (for July 1, 2003, through June 30, 2009)
E-85 gasoline	17¢ per gallon beginning January 1, 2006, through June 30, 2007
	19¢ per gallon (for July 1, 2007, through June 30, 2009)
Aviation gasoline	8¢ per gallon
Special fuel (diesel)	22.5¢ per gallon
Special fuel (aircraft)	3¢ per gallon
CNG	16¢ per 100 cu. ft.

68.2(2) Except as otherwise provided in this subrule, until June 30, 2012, this subrule shall apply to the excise tax imposed on each gallon of motor fuel used for any purpose for the privilege of operating motor vehicles in this state. The rate of the excise tax shall be based on the number of gallons of ethanol blended gasoline that is distributed in this state as expressed as a percentage of the number of gallons of motor fuel distributed in this state. The number of gallons of ethanol blended gasoline and motor fuel distributed in this state shall be based on the total taxable gallons of ethanol blended gasoline and motor fuel as shown on the fuel tax monthly reports issued by the department for January through December for each determination period. The department shall determine the percentage for each determination period beginning January 1 and ending December 31. The rate for the excise tax shall apply for the period beginning July 1 and ending June 30 following the end of the determination period. The rate for the excise tax shall be as follows:

Ethanol %	Ethanol Tax	Gasoline Tax
00/50	19.0	20.0
50+/55	19.0	20.1
55+/60	19.0	20.3
60+/65	19.0	20.5
65+/70	19.0	20.7
70+/75	19.0	21.0
75+/80	19.3	20.8
80+/85	19.5	20.7
85+/90	19.7	20.4
90+/95	19.9	20.1
95+/100	20.0	20.0

Except as otherwise provided in this subrule, after June 30, 2012, an excise tax of 20 cents is imposed on each gallon of motor fuel used for any purpose for the privilege of operating motor vehicles in this state.

68.2(3) The tax attaches when the fuel is withdrawn from a terminal or imported into Iowa. The tax is payable to the department by the supplier, restrictive supplier, importer, blender, or any person who owns the fuel at the time it is brought into the state by a restrictive supplier or importer or any other person who possesses taxable fuel upon which the tax has not been paid. The tax is to be remitted to the department by a supplier, restrictive supplier, or blender by the last day of the month following the month in which the fuel is withdrawn from a terminal or imported. The tax is to be remitted by an importer by the last day of the month for fuel imported in the first 15 days of the month and by the fifteenth day of the following month for fuel imported after the fifteenth day of the previous month. Nonlicensees who possess taxable fuel upon which the tax has not been paid must file returns and pay the tax the same as a restrictive supplier (monthly). All licensees must make payment by electronic funds transfer (see publication 90-201 for EFT requirements).

68.2(4) The department shall determine the actual tax paid for E-85 gasoline in the previous calendar year and compare this amount to the amount that would have been paid using the tax rate imposed in Iowa Code section 452A.3, subsection 1 or 1A. If the difference is less than $25,000, the tax rate for the tax period beginning the following July 1 shall be 17¢ per gallon. If the difference is $25,000 or more, the tax rate shall be the rate in effect pursuant to Iowa Code section 452A.3, subsection 1 or 1A.

Beginning January 1, 2006, retailers of E-85 gasoline must file a report with the department by the last day of the month of each calendar quarter for each retail location showing the number of invoiced gallons of E-85 gasoline sold by the retailer in Iowa during the preceding calendar quarter. The report must also include a listing of the vendors providing E-85 gasoline to the retailer and the number of gallons received from each vendor. If the retailer blends E-85 gasoline, the retailer must show the number of gallons of motor fuel (including both gasoline and alcohol) purchased and blended. The report must be signed under penalty for false certificate.

68.2(5) Persons having title to motor fuel, ethanol blended gasoline, undyed special fuel, compressed natural gas, or liquefied petroleum gas in storage and held for sale on the effective date of an increase in the excise tax rate imposed on motor fuel, ethanol blended gasoline, undyed special fuel, compressed natural gas, or liquefied petroleum gas shall be subject to an inventory tax based upon the gallonage in storage as of the close of the business day preceding the effective date of the increased excise tax rate of motor fuel, ethanol blended gasoline, undyed special fuel, compressed natural gas, or liquefied petroleum gas which will be subject to the increased excise tax rate.

Persons subject to the tax imposed under this subrule shall take an inventory to determine the gallonage in storage for purposes of determining the tax and shall report the gallonage and pay the tax due within 30 days of the prescribed inventory date.

The amount of the inventory tax is equal to the inventory tax rate times the gallonage in storage. The inventory tax rate is equal to the increased excise tax rate less the previous excise tax rate. The inventory tax does not apply to an increase in the tax rate of a specified fuel, except for compressed natural gas, unless the increase in the tax rate of that fuel is in excess of one-half cent per gallon.

This rule is intended to implement Iowa Code section 452A.3 as amended by 2007 Iowa Acts, Senate File 601, and sections 452A.8 and 452A.85.

701—68.3(452A) Exemption. Motor fuel or undyed special fuel sold for export or exported from this state to another state, territory, or foreign country is exempt from the excise tax. The fuel is deemed sold for export or exported only if the bill of lading or manifest indicates that the destination of the fuel withdrawn from the terminal is outside the state of Iowa. The mode of transportation is not of consequence. In the event fuel is taxed and then subsequently exported, an amount equal to the tax previously paid will be allowable as a refund, upon receipt by the department of the appropriate documents, to the party who originally paid the tax. If the sale of exported fuel is completed in Iowa, then the sale is subject to Iowa sales tax if it is not exported for resale or otherwise exempt from sales tax. The sale is completed in Iowa if the foreign purchaser takes physical possession of the fuel in this

state. *Dodgen Industries, Inc. v. Iowa State Tax Commission*, 160 N.W.2d 289 (Iowa 1968). See sales tax rule 701—18.37(422,423).

Indelible dye meeting United States Environmental Protection Agency and Internal Revenue Service regulations must be added to fuel before or upon withdrawal at a terminal or refinery rack for that fuel to be exempt from tax and the dyed fuel can only be used for a nontaxable purpose listed in Iowa Code section 452A.17, subsection 1, paragraph *"a."* However, this exemption does not apply to fuel used for idle time, power takeoffs, reefer units, or pumping credits, or fuel used by contract carriers.

This rule is intended to implement Iowa Code section 452A.3 as amended by 1995 Iowa Acts, chapter 155.

701—68.4(452A) Ethanol blended gasoline taxation—nonterminal location.

68.4(1) Blenders who own the alcohol (supplier) being used to blend with gasoline must purchase the gasoline from a supplier and pay the appropriate tax to the supplier (20¢ per gallon). The blender must obtain a blender's license and compute the tax due on the total gallons of blended product and make payment to the department for the additional amount due. For purposes of this subrule and subrules 68.4(2) and 68.4(3), the tax rate for gasoline is presumed to be 20¢ per gallon and the tax rate for ethanol blended gasoline is presumed to be 19¢ per gallon. The actual tax rate for the appropriate period is shown in subrule 68.2(1).

EXAMPLE:

Blender purchases 7,200 gallons tax-paid gasoline (7,200 × .20) =	$1,440.00
Blender adds 800 gallons untaxed alcohol	.00
Total tax paid on products	$1,440.00
Total tax due on 8,000 gallons blended product (8,000 × .19) =	$1,520.00
Additional Amount Due	$ 80.00

68.4(2) Blenders who purchase alcohol and gasoline from a supplier must pay tax of $.19 per gallon on the alcohol purchased and $.20 per gallon on the gasoline purchased. The blender must obtain a refund permit to receive a refund of the overpayment of tax on the blended product.

EXAMPLE:

Blender purchases 7,200 gallons tax-paid gasoline (7,200 × .20) =	$1,440.00
Blender purchases 800 gallons tax-paid alcohol (800 × .19) =	152.00
Total Tax Paid on Products	$1,592.00
Total tax due on 8,000 gallons blended product (8,000 × .19) =	$1,520.00
Amount of Refund Allowable	$ 72.00

68.4(3) Ethanol blended gasoline—blending errors. For periods beginning July 1, 1978, to June 30, 2000.

Where blending errors occur and an insufficient amount of alcohol has been blended with motor fuel so that the mixture fails to qualify as ethanol-blended gasoline as defined in Iowa Code section 452A.2(6), the tax shall be determined as follows:

a. If the amount of the alcohol blended with motor fuel is short by five gallons or less per blend, the alcohol and motor fuel blended is to be considered ethanol-blended gasoline and there will be no penalty or assessment of additional tax.

b. If the alcohol and motor fuel mixture is short of alcohol by more than five gallons but the alcohol blended with the motor fuels is short by 1.01 percent or less of such mixture, the motor fuel must be divided for tax purposes into ethanol-blended gasoline and motor fuel containing no alcohol as follows.

That portion of alcohol must be added to motor fuel on the basis of one part alcohol to nine parts motor fuel to determine the portion which is considered ethanol-blended gasoline and have a tax status

as such. The portions of motor fuel remaining are to be considered taxable motor fuel subject to tax at the prevailing rate.

c. If the amount of alcohol blended with motor fuel is short by more than 1.01 percent of the total blend, the total blend of motor fuel and alcohol is subject to tax as motor fuel at the prevailing rate of tax.

The following formula will be used to compute blending errors:

Motor fuel ÷ 9 = required alcohol

Misblended ethanol blended gasoline × .0101 = gallons of alcohol tolerance

Required alcohol – actual alcohol is less than or equal to gallons of alcohol short

Actual alcohol × 9 = motor fuel portion of ethanol-blended gasoline

Motor fuel portion of ethanol-blended gasoline + actual alcohol = ethanol-blended gasoline

Actual motor fuel – motor fuel portion of ethanol-blended gasoline = motor fuel

The following factors are assumed for all examples:

Figures are rounded to the nearest whole gallons; ethanol-blended gasoline taxed at $.19 per gallon; motor fuel taxed at $.20 per gallon. Penalty and interest charges are not computed in the examples.

EXAMPLE 1.

Motor fuel	=	8,000	gal.
Alcohol	=	800	gal.
8,000 ÷ 9	=	889	gal. required alcohol
8,800 × .0101	=	89	gal. alcohol tolerance
889 – 800	=	89	gal. short of alcohol

89 is equal to 89 which means that the tax is applied according to paragraph *"b"* above as follows:

800 × 9	=	7,200	gal. motor fuel portion of ethanol-blended gasoline
7,200 + 800	=	8,000	gal. of ethanol-blended gasoline
8,000 – 7,200	=	800	gal. of motor fuel subject to tax
8,000 gal. of alcohol × $.19	=	$1520	tax on ethanol-blended gasoline
800 gal. of motor fuel × $.20	=	$ 160	
TOTAL		$1680	($1520 + $160)

EXAMPLE 2.

Motor fuel	=	8,000	gal.
Alcohol	=	795	gal.
8,000 ÷ 9	=	889	gal. required alcohol
8,795 × .0101	=	89	gal. alcohol tolerance
889 – 795	=	94	gal. short of alcohol

94 is greater than 89 which means that the entire blend is considered motor fuel and the tax is applied according to paragraph *"c"* above as follows:

8,795 × $.20	=	$1759.00

EXAMPLE 3.

Motor fuel	=	8,000	gal.
Alcohol	=	885	gal.
8,000 ÷ 9	=	889	gal. required alcohol
889 gal. – 885 gal.	=	4	gal. short of alcohol

This total blend is considered ethanol blended gasoline because the blend is short by less than 5 gallons. The tax would be as follows:

8,885 gal. × $.19	=	$1688.15

This rule is intended to implement Iowa Code section 452A.8 as amended by 1995 Iowa Acts, chapter 155.

701—68.5(452A) Tax returns—computations.

68.5(1) Supplier—nexus.

a. The fuel tax liability for a supplier is computed by multiplying the per gallon fuel tax rate by the total number of invoiced gallons of motor fuel or undyed special fuel withdrawn from the terminal by the supplier within the state or by the supplier with an Iowa nexus from a terminal outside the state during the preceding calendar month, less deductions for fuel exported in the case of in-state withdrawals and the distribution allowance provided for in Iowa Code section 452A.5.

Tax shall not be paid when the sale of alcohol occurs within a terminal from an alcohol manufacturer to a licensed supplier. The tax shall be paid by the licensed supplier when the invoiced gross gallonage of the alcohol or the alcohol part of the ethanol blended gasoline is withdrawn from a terminal for delivery in this state. This makes the licensed supplier responsible for the tax on both the alcohol and the gasoline portions of the ethanol blended gasoline and for the reporting and accounting of this fuel as ethanol blended gasoline on the supplier report.

b. If fuel is withdrawn by a supplier with no nexus in Iowa, but who voluntarily agrees to collect and report the tax, from a terminal outside of Iowa for importation into Iowa, the tax liability is computed in the same manner as in paragraph *"a"* with the exception that no deduction is allowable for exports.

68.5(2) The fuel tax liability for a restrictive supplier is to be computed by multiplying the per gallon fuel tax rate by the total number of invoiced gallons of motor fuel or undyed special fuel imported into Iowa during the preceding calendar month.

68.5(3) The fuel tax liability for an importer is computed by multiplying the per gallon fuel tax rate by the total number of invoiced gallons of motor fuel or undyed special fuel imported into Iowa during the applicable reporting period.

68.5(4) The tax liability for a nonlicensee is computed the same as a restrictive supplier. If motor fuel or undyed special fuel is exported from this state with no tax paid and subsequently returned to this state because all or a portion of it was not delivered where destined, the tax must be paid to the department by the nonlicensee.

All entries on the return for determining the tax liability must be rounded to the nearest whole number.

This rule is intended to implement Iowa Code section 452A.3 as amended by 2001 Iowa Acts, House File 736, and sections 452A.5, 452A.8, and 452A.9.

701—68.6(452A) Distribution allowance. The tax computation for a supplier includes a distribution allowance of 1.6 percent of the motor fuel gallonage and 0.7 percent of the undyed special fuel gallon-age removed from the terminal during the reporting period. The distributor purchasing the fuel from the supplier is entitled to 1.2 percent of the motor fuel distribution allowance. The distributor or

dealer purchasing fuel from a supplier is entitled to 0.35 percent of the undyed special fuel distribution allowance. The distribution allowance does not apply to fuel exported.

This rule is intended to implement Iowa Code sections 452A.5 and 452A.8 as amended by 1995 Iowa Acts, chapter 155.

701—68.7(452A) Supplier credit—uncollectible account. A licensed supplier who is unable to recover the tax from an eligible purchaser or end user is not liable for the tax and may credit the amount of unpaid tax against a later remittance of tax.

68.7(1) To qualify for the credit, the supplier must notify the department in writing of the uncollectible account no later than ten calendar days after the due date for payment of the tax.

Notification is to be sent to the Iowa Department of Revenue, Examination Section, Compliance Division, P. O. Box 10456, Des Moines, Iowa 50306-0456.

68.7(2) A supplier does not qualify for the credit if the purchaser did not elect to apply for the eligible purchaser or end user status or did not qualify to be an eligible purchaser. Likewise, the credit does not apply if the supplier sells additional fuel to a delinquent eligible purchaser or end user after notifying the department that the supplier has an uncollectible debt with an eligible purchaser.

68.7(3) Upon notification from the supplier that an eligible purchaser is in default of the tax payment, that person's eligible purchaser or end user status will be canceled by the department. The eligible purchaser or end user status will not be reinstated until such time as the purchaser posts securities to guarantee future tax payments as provided in 701—paragraph 67.21(1)*"d."*

68.7(4) Eligible purchaser. Any distributor of motor fuel or special fuel or end user of special fuel who requests authorization to make delayed payments of the motor vehicle fuel tax must first register with the department to obtain the eligible purchaser status.

The eligible purchaser must pay the tax to the supplier by electronic funds transfer one business day prior to the date the tax is to be paid by the supplier.

Once approved, the eligible purchaser status is valid until voluntarily canceled by the eligible purchaser or canceled by the department of revenue. See 701—subrule 67.23(4).

This rule is intended to implement Iowa Code section 452A.8 as amended by 1995 Iowa Acts, chapter 155.

701—68.8(452A) Refunds. Refunds are allowable for the tax paid on motor fuel and undyed special fuel in the following situations:

68.8(1) Federal government. Fuel sold to the United States or to any agency or instrumentality of the United States. The tax is subject to refund regardless of how the fuel is used. The following factors, among others, will be considered in determining if any organization is an instrumentality of the United States government: (a) whether it was created by the federal government, (b) whether it is wholly owned by the federal government, (c) whether it is operated for profit, (d) whether it is "primarily" engaged in the performance of some "essential" government function, and (e) whether the tax will impose an economic burden upon the federal government or serve to materially impair the usefulness and efficiency of the organization or to materially restrict it in the performance of its duties if it were imposed. *Unemployment Compensation Commission v. Wachovia Bank & Trust Company*, 215 N.C. 491, 2 S.E.2d 592 (1939); 1976 O.A.G. 823, 827. The American Red Cross, Project Head Start, Federal Land Banks and Federal Land Bank Associations, among others, have been determined to be instrumentalities of the federal government. Receivers or trustees appointed in the federal bankruptcy proceedings are subject to the excise tax. *Wood Brothers Construction Co. v. Bagley*, 232 Iowa 902, 6 N.W.2d 397 (1942).

The refund is not available to employees of the federal government who purchase fuel individually and are later reimbursed by the federal government. The name of the federal agency must appear on the invoice as the purchaser of the fuel or the refund will not be allowed.

68.8(2) Transit systems. Fuel sold to an Iowa urban transit system as defined in 701—67.1(452A) or a company operating a taxicab service under contract with an Iowa urban transit system which is used for a purpose specified in Iowa Code section 452A.57(6) and fuel sold to a regional transit system as defined in 701—67.1(452A) which is used for a purpose specified in Iowa Code section 452A.57(11).

68.8(3) The state and political subdivisions. Fuel sold to the state of Iowa or any political subdivision of the state which is used for public purposes.

The refund is not available to agencies or instrumentalities of a political subdivision, but rather only to the state of Iowa, agencies of the state of Iowa, and political subdivisions of the state of Iowa. The general attributes and factors in determining if an entity is a political subdivision of the state of Iowa are: (a) the entity has a specific geographic area, (b) the entity has public officials elected at public elections, (c) the entity has taxing power, (d) the entity has a general public purpose or benefit, and (e) the foregoing attributes, factors or powers were delegated to the entity by the state of Iowa. (1976 O.A.G. 823)

The refund is also not available to employees of a governmental unit who purchase fuel individually and are later reimbursed by the governmental unit. The name of the governmental unit must appear on the invoice as the purchaser of the fuel or the refund will not be allowed. *Alabama v. King & Boozer*, 314 U.S. 1 (1941).

68.8(4) Contract carriers. Motor fuel and undyed special fuel sold to a contract carrier who has a contract with a public school under Iowa Code section 285.5 for the transportation of pupils of an approved public or nonpublic school is refundable. If the contract carrier also uses fuel for purposes other than the transportation of pupils, the refund will be based on that percentage of the total amount of fuel purchased which reflects the pupil transportation usage.

A refund requested by contract carriers will be reduced by the applicable sales tax unless otherwise exempt. The name of the contract carrier must appear on the invoice as the purchaser of the fuel or the refund will not be allowed. *Alabama v. King & Boozer*, 314 U.S. 1 (1941).

68.8(5) Fuel used in unlicensed vehicles, stationary engines, machinery and equipment used for nonhighway purposes, implements used in agricultural production, and fuel used for home heating.

68.8(6) Fuel used for producing denatured alcohol.

68.8(7) Fuel used in the watercraft of a commercial fisher, licensed and operating under an owner's certificate for commercial fishing gear issued pursuant to Iowa Code section 482.4.

68.8(8) Fuel placed in motor vehicles, whether registered or not registered, not operated on public highways, and used in the extraction and processing of natural deposits.

68.8(9) Idle time. Persons who wish to claim a refund for idle time (the engine is running but not propelling the vehicle) must first apply to the department and provide statistical information on how the refund amount will be calculated. Normally, to qualify for a refund the vehicle must be equipped with an on-board monitoring device which will record the actual time the engine is idling and the amount of fuel consumed while idling. If the device only records the idle time and not fuel used, the refund amount will be calculated at one-half gallon of fuel consumed per one hour of idle time. The computation must also consider the miles driven in Iowa versus total miles driven. The department will require a review of interstate carrier reports before approval of the computation method.

68.8(10) Power takeoff. Persons operating vehicles which have auxiliary equipment that is powered by the power takeoff may apply for a refund for that portion of the fuel used for powering the auxiliary equipment.

The person requesting the refund must furnish the department with statistical information on how the exempt percentage is established. The percentage can be established by using the following noninclusive methods.

- Determine the actual fuel usage by the hour while the auxiliary equipment is in use compared to total hours the engine is running.
- Establish total miles per gallon for the vehicle when auxiliary equipment is not in use compared to miles per gallon while the equipment is in use.
- Other computation methods to be reviewed by the department prior to approval.

It has been predetermined that tax on fuel used in the mixing of cement into concrete, the off-loading of the concrete, and the loading and off-loading of solid waste will be refunded on the basis of 30 percent of the fuel placed in the fuel supply tank of the vehicle provided proper records are maintained. Proper records shall consist of records of fills for each vehicle from tax-paid bulk storage tanks or sales tickets where fuel is purchased directly from a service station. Each vehicle must be identifiable by a unit number so the department can trace fuel usage to specific vehicles. An additional allowance will be

granted where it can be substantiated through the use of separate meters which operate to measure the fuel when the vehicle is stationary or the use of separate tanks which fuel the vehicle only when the vehicle is stationary that the actual nonhighway fuel usage exceeds 30 percent.

68.8(11) Refrigeration units (reefers). Tax paid on motor fuel and undyed special fuel is subject to refund. The person must maintain records of fuel purchases to substantiate the tax-paid purchases. Invoices must meet the criteria set forth in rule 701—67.12(452A). In addition, the invoices must separately state fuel purchased and placed in the reefer unit. Liquefied petroleum gas may be purchased tax-free for use in reefer units. See rule 701—69.10(452A).

68.8(12) Pumping credits. A refund will be allowed for taxes paid on fuel once that fuel has been placed in the fuel supply tank of a motor vehicle when the motor of that vehicle is used as a power source for off-loading procedures. Meter readings from the pump used in the off-loading procedure or the invoice, manifest or bill of lading number covering the product off-loaded must be retained. The claims for refund, unless a different amount can be proven, will be (a) one-half gallon credit for each 1,000 gallons of liquid products pumped and three-tenths of a gallon credit for each ton of dry products pumped when using motor fuel or special fuel (diesel) to power the motor and (b) one gallon credit for each 1,000 gallons of liquid products pumped and three-tenths of a gallon credit for each ton of dry products pumped when using special fuel (LPG) to power the motor.

68.8(13) Transport diversions. When a transport load of motor fuel or undyed special fuel is sold tax-paid with a destination in this state and later diverted to a destination outside the state, the person who actually paid the Iowa tax is entitled to a refund. To secure a refund, the person must file a completed claim form provided by the department with supporting documentation including a copy of the bill of lading, invoices or document showing where and to whom the fuel was delivered, a copy of the reporting form and evidence of payment to the state where the fuel was actually delivered.

68.8(14) Casualty loss. In the event fuel is lost or destroyed through fire, explosion, lightning, flood, storm, earthquake, terrorist attack, or other casualty, the taxpayer must inform the department in writing of such loss within 10 days of the loss; and the notification must contain the amount of gallon-age lost or destroyed which must be in excess of 100 gallons. An application for refund must be submitted to the department within 60 days of the notification and contain a notarized affidavit sworn to by the person having immediate custody of the fuel at the time of the loss or destruction setting forth, in full detail, the circumstances of the loss or destruction and the number of gallons. If the fuel was in storage where several fuel purchases were commingled, it is a rebuttable presumption that the fuel lost through casualty was a part of the last delivery into the storage just prior to the loss. No refund is allowable for fuel lost through evaporation, theft, normal leakage, or unknown causes. Leakage resulting from a major accident or catastrophe is subject to refund.

68.8(15) Exports by eligible purchasers (distributors). Distributors who have purchased tax-paid motor fuel or undyed special fuel and sell the fuel to consumers outside the state may apply for a refund of the Iowa tax paid. The distributor must retain records as provided in rule 701—67.3(452A) to support the request for refund.

68.8(16) Blending errors for special fuel. Dyed special fuel commingled with undyed special fuel and motor fuel commingled with special fuel. If dyed special fuel is inadvertently mixed with tax-paid undyed special fuel to the extent that the undyed fuel must have additional dye added to meet federal dying requirements to qualify as exempt dyed fuel, the tax is refundable on the undyed special fuel. The refund request must contain the number of gallons of undyed fuel lost through the mixing error and documentation as to how the gallonage was determined. If motor fuel is blended in error with dyed special fuel to produce a commingled product that must be destroyed or refined for subsequent use, the tax-paid fuel is subject to refund. The request for refund must contain documentation that the commingled product was destroyed or sold for purposes of refinement at a terminal.

68.8(17) Watercraft. Special fuel used in watercraft. This subrule is retroactive to July 1, 1996.

68.8(18) Refund of tax—Indians. Sales by Indians to other Indians of their own tribe on federally recognized Indian reservations or settlements of which they are tribal members are exempt from the tax. However, Indian sellers are subject to the record-keeping requirements of Iowa Code chapter 452A. The fuel must be purchased by the Indian seller with the tax included in the purchase price, unless the

seller's status as a particular licensee authorizes the seller to purchase fuel tax-free. The tax exemption is allowed to the Indian purchaser by the purchaser's filing a claim for refund of the tax paid or the tribe of which the Indian purchaser is a member filing a claim for refund of the tax paid by the tribe on fuel sold to the Indian purchaser.

68.8(19) Racing fuel.

68.8(20) Benefited fire districts if the fuel is used for public purposes.

This rule is intended to implement Iowa Code section 452A.17 as amended by 2005 Iowa Acts, House File 216, and Iowa Code section 452A.71.

701—68.9(452A) Claim for refund—payment of claim. In order to receive a refund, the claimant must hold a refund permit.

68.9(1) Persons requesting a refund for fuel used for any exempt purpose will do so by providing all or a portion of the following: (a) refund permit number, (b) type of fuel, (c) total number of gallons/tons of fuel used to calculate the refund amount, (d) the beginning and ending dates of the tax period, (e) net cost of fuel, (f) Iowa sales tax due (net cost of fuel times sales tax rate), (g) other items depending on the type of permit and claim type, (h) the total amount of refund claimed, and (i) additional information as required.

Persons requesting a refund for casualty loss, transport diversions, blending errors of motor fuel and alcohol, and blending errors of special fuel must file in writing on the forms provided by the department and must attach supporting documents explaining why a refund is due.

68.9(2) Refunds are made and the amount of the refund is paid to the person who actually paid the tax with the following exception: Persons requesting a refund for idle time, power takeoff, reefer units, pumping credits, or transport diversions may designate another person as an agent to file the claim and receive the refund. The person acting as an agent for others must provide the department with the following information including, but not limited to, the name, address, and federal identification number or social security number of the person on whose behalf they are requesting the refund. Once a person is designated as an agent, this designation remains in force until the department is notified in writing the agency agreement no longer exists. A governmental agency may designate another governmental agency as an agent for filing and receiving any tax refund authorized in Iowa Code section 452A.17.

68.9(3) Deposit of refund. If the person so designates on the application, the department will direct deposit the refund in the person's designated bank account. If this option is selected on the application, additional forms will be provided to secure the needed information for direct deposit. In lieu of direct deposit, the permit holder will receive a state warrant.

68.9(4) A claim for refund will not be allowed unless the claimant has accumulated $60 in credits for one calendar year. A claim for refund may be filed anytime the $60 minimum has been met within the calendar year. If the $60 minimum has not been met in the calendar year, the credit must be claimed on the claimant's income tax return unless the claimant is not required to file an income tax return in which case a refund will be allowed. An income tax credit may not be claimed for any year in which a claim for refund was filed. Once the $60 minimum has been met, the claim for refund must be filed within one year if met prior to July 1, 2002, and within three years if met on or after July 1, 2002.

EXAMPLE: A claim for refund in the amount of $200 is filed in March of 1996. During the remainder of 1996 an additional $50 in credits is accumulated. The claimant cannot claim this $50 credit on the claimant's 1996 income tax return because an income tax credit cannot be filed for any year in which a claim for refund was filed. The claimant must file a claim for refund of the $50 even though it is below the $60 minimum.

EXAMPLE: The claimant does not have a refund permit. The claimant accumulates $40 in credits during January of 2002 and $50 in credits during June of 2002. The claimant may claim a $90 credit on the claimant's 2002 income tax return or apply for a refund permit and claim a refund within one year of June 2002 which is the date the $60 minimum was met. If the $60 minimum is met on or after July 1, 2002, the claim for refund must be filed within three years of the date the $60 minimum was met.

68.9(5) A refund will not be paid with respect to any motor fuel taken out of this state in supply tanks of watercraft, aircraft, or motor vehicles or any undyed special fuel taken out of this state in aircraft or motor vehicles.

68.9(6) Rescinded IAB 11/3/99, effective 12/8/99.

This rule is intended to implement Iowa Code sections 452A.17, 452A.19, 452A.21, and 452A.72 as amended by 2002 Iowa Acts, Senate File 2305.

701—68.10(452A) Refund permit. To obtain the refund provided for in Iowa Code chapter 452A and rule 68.8(452A), the claimant must have an uncanceled refund permit. The application for a refund permit is provided by the department and will contain, but not be limited to, the following information: (1) the name and location of the business and the mailing address if different, (2) the type of ownership, (3) the social security number or federal identification number of the applicant, and (4) the type of refund requested. The refund permit is issued without cost and remains in effect until revoked, canceled or until the permit becomes invalid. All refund permit holders are required to keep invoices and copies of returns if filed, supporting schedules and studies for documentation to support the refund.

This rule is intended to implement Iowa Code section 452A.18 as amended by 1995 Iowa Acts, chapter 155.

701—68.11(452A) Revocation of refund permit. The following violations will result in the revocation of the permit: (1) using a false or altered invoice in support of a claim, (2) making a false statement in a claim for refund or in response to an investigation by the department of a claim for refund, (3) refusal to submit the claimant's books and records for examination by the department, and (4) nonuse for a period of three years. If the permit is revoked for reason (1), (2), or (3) above, the permit will not be reissued for a period of at least one year. If the permit is revoked for reason (4) above, the permit will be reissued upon proper application. (See rule 701—7.55(17A) for revocation procedure.)

This rule is intended to implement Iowa Code section 452A.19 as amended by 2002 Iowa Acts, Senate File 2305.

701—68.12(452A) Income tax credit in lieu of refund. In lieu of applying for a refund permit, a person or corporation may claim the refund allowable under Iowa Code section 452A.17 as an income tax credit. If a person or corporation holds a refund permit and elects to receive an income tax credit, the person or corporation must cancel the refund permit within 30 days after the first day of its year or the permit becomes invalid and application must be made for a new permit. Once the election to receive an income tax credit has been made, it remains in effect until the election is changed. The income tax credit is not available for refunds relating to casualty losses, transport diversions, pumping credits, blending errors, idle time, power takeoffs, reefer units, exports by distributors, and excess tax paid on ethanol blended gasoline.

This rule is intended to implement Iowa Code sections 422.110, 452A.17(2), and 452A.21 as amended by 1999 Iowa Acts, Senate File 136.

701—68.13(452A) Reduction of refund—sales tax. Under Iowa Code section 422.45(11), the gross receipts from the sale of motor fuel and special fuel consumed for highway use or in watercraft or aircraft where the fuel tax has been imposed and paid and no refund has been or will be allowed are exempt from Iowa sales tax. Therefore, unless the fuel is used for some other exempt purpose under Iowa Code section 422.42(3) or 422.45 (e.g., used for processing, used for agricultural purposes, used by an exempt government entity, used by a private nonprofit educational institution), or the fuel is lost through a casualty, the refund of taxes on motor fuel or special fuel will be reduced by the applicable sales tax. See sales tax rule 701—18.37(422,423). The sale base upon which the sales tax will be applied shall include all federal excise taxes, but will not include the Iowa motor vehicle fuel tax. *W. M. Gurley v. Arny Rhoden*, 421 U.S. 200, 44 L.Ed. 110, 95 S.Ct. 1605.

This rule is intended to implement Iowa Code section 452A.17 as amended by 1995 Iowa Acts, chapter 155.

701—68.14(452A) Terminal withdrawals—meters. Any refinery or terminal within this state must be fixed with meters which totalize the gross gallons withdrawn. All bills of lading or manifests must show the gross gallons withdrawn. A temperature-adjusted or other method shall not be used except as it applies to liquefied petroleum gas and the sale or exchange of petroleum products between petroleum refiners. All fuel withdrawn from a refinery or terminal within this state must pass through these meters.

This rule is intended to implement Iowa Code sections 452A.2, 452A.8, 452A.15(2), and 452A.59 as amended by 1995 Iowa Acts, chapter 155.

701—68.15(452A) Terminal and nonterminal storage facility reports and records. Each terminal and nonterminal storage facility operating in Iowa must file a monthly inventory report with the department. The report shall include, but not be limited to, the following information:

1. The name and license number of the company that owns and operates the terminal or nonterminal storage facility.
2. The location of the terminal or nonterminal storage facility.
3. The month and year covered by the report.
4. The terminal code assigned by the Internal Revenue Service or the storage facility license number assigned by the department.
5. The beginning inventory.
6. The total receipts for the month including for each receipt: (a) the gross gallons received by schedule code, by fuel type and, if diesel fuel, whether dyed or undyed fuel, (b) the bill of lading number, (c) the date of receipt, (d) the seller, (e) the carrier, (f) the mode of transportation, and (g) the destination state.
7. The total withdrawals for the month, including for each withdrawal: (a) the gross gallons withdrawn by schedule code and by fuel type and, if diesel fuel, whether dyed or undyed fuel, (b) the bill of lading number, (c) the date of withdrawal, (d) the consignor, (e) the consignee, (f) the mode of transportation, (g) the destination state, (h) the origin state, and (i) the carrier.
8. The actual ending inventory and any gains or losses.
9. The signature or electronic signature of the person responsible for preparing the report.
10. Such additional information as the department may require.

For periods beginning on or after July 1, 2002, the director may impose a civil penalty against any person who fails to file the reports required under the motor fuel tax laws. The penalty shall be $100 for the first violation and shall increase by $100 for each additional violation occurring in the calendar year in which the first violation occurred.

The director may require that reports be filed by electronic transmission. All licensees must file reports by electronic transmission beginning September 1, 2006.

This rule is intended to implement Iowa Code section 452A.15(2).

701—68.16(452A) Method of reporting taxable gallonage. The exclusive method of determining gallonage of any purchase or sale of motor fuel or special fuel and distillate fuel is to be on gross-volume basis. A temperature-adjusted or other method cannot be used, except as it applies to liquefied petroleum gas and the sale or exchange of petroleum products between petroleum refineries.

This rule is intended to implement Iowa Code section 452A.8 as amended by 1995 Iowa Acts, chapter 155.

701—68.17(452A) Transportation reports. The reports required under Iowa Code section 452A.15(1) are to be filed by railroad carriers, common carriers, contract carriers, distributors transporting fuel for others, and anyone else transporting fuel from without the state and unloading it at other than terminal storage within the state. The report must include all fuel which was imported into Iowa and unloaded at other than terminal storage, all fuel withdrawn from Iowa terminal storage and delivered in Iowa, and all fuel withdrawn from Iowa terminal storage and exported from Iowa. These reports must be filed monthly and show as to each delivery:

1. The name, address, and federal identification number or social security number of the person to whom actually delivered.

2. The name, address, and federal identification number or social security number of the originally named consignee, if delivered to anyone other than the originally named consignee.

3. The point of origin, the point of delivery, and the date of delivery.

4. The number and initials of each tank car and the number of gallons contained therein, if shipped by rail.

5. The name of the boat, barge, or vessel, and the number of gallons contained therein, if shipped by water.

6. The registration number of each tank truck and the number of gallons contained therein, if transported by motor truck.

7. The manner, if delivered by other means, in which the delivery is made.

8. Such additional information relative to shipments of motor fuel or special fuel as the department may require.

For periods on or after July 1, 2002, the director may impose a civil penalty against any person who fails to file the reports required under the motor fuel tax laws. The penalty shall be $100 for the first violation and shall increase by $100 for each additional violation occurring in the calendar year in which the first violation occurred.

The director may require that reports be filed by electronic transmission.

This rule is intended to implement Iowa Code section 452A.15 as amended by 2002 Iowa Acts, House File 2622 and Senate File 2305.

701—68.18(452A) Bill of lading or manifest requirements. Whenever a bill of lading or manifest is required to be issued, carried, retained, or submitted by these rules, it shall meet the following minimum requirements:

1. Contain the name and address of the refinery, terminal, or point of origin.
2. Contain the date of withdrawal or import.
3. Contain the name of the shipper-supplier-consignor.
4. Contain the name of the purchaser-consignee.
5. Contain the place of actual destination.
6. Contain the name of the transporter.
7. The gross gallons by fuel type.
8. Have machine printed thereon a serial number of not less than four digits.

This rule is intended to implement Iowa Code sections 452A.10, 452A.12, 452A.60, and 452A.76 as amended by 1995 Iowa Acts, chapter 155.

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CHAPTER 69
LIQUEFIED PETROLEUM GAS— COMPRESSED NATURAL GAS

[Prior to 1/1/96, see 701—Ch 65]

701—69.1(452A) Definitions. For the purpose of this chapter, the following definitions shall govern:

"C.N.G." shall mean compressed natural gas.

"Department" means the department of revenue.

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

"Distributor" means any person who sells compressed natural gas or liquefied petroleum gas in bulk for highway use.

"Invoiced gallons" means gross gallons as shown on the bill of lading or invoice. A temperature-adjusted method may be used as it applies to liquefied petroleum gas.

"Licensed compressed natural gas and liquefied petroleum gas dealer" means a person in the business of handling untaxed compressed natural gas or liquefied petroleum gas who delivers any part of the fuel into a fuel supply tank of any motor vehicle.

"Licensed compressed natural gas and liquefied petroleum gas user" means a person licensed by the department who dispenses compressed natural gas or liquefied petroleum gas, upon which the special fuel tax has not been previously paid, for highway use from fuel sources owned and controlled by the person into the fuel supply tank of a motor vehicle, or commercial vehicle owned or controlled by the person.

"Licensed metered pumps or metered pumps" shall mean pumps which have been metered, inspected, tested for accuracy, sealed and licensed by the state department of agriculture pursuant to Iowa Code section 452A.8(2)*"e."*

"Licensed metered storage or metered storage" shall mean storage facilities which are fixed with "licensed metered pumps."

"L.P.G." shall mean liquefied petroleum gas.

"Owner" shall mean and include the owner or the employees, agents, or persons under the control of the owner.

"Special fuel" means liquefied petroleum gas or compressed natural gas.

"Use" means the receipt, delivery, or placing of liquefied petroleum gas by a licensed liquefied petroleum gas user into a fuel supply tank of a motor vehicle while the vehicle is in the state, except that with respect to natural gas used as a special fuel, "use" means the receipt, delivery, or placing of the natural gas into equipment for compressing the gas for subsequent delivery into the fuel supply tank of a motor vehicle.

In addition to the preceding definitions, applicable definitions contained in Iowa Code section 452A.2 and rule 701—67.1(452A) shall govern the rules in this chapter where applicable.

This rule is intended to implement Iowa Code chapter 452A.

701—69.2(452A) Tax rates—time tax attaches—responsible party—payment of the tax. See 701—subrule 68.2(1) for tax rates. The excise tax on L.P.G. attaches when the special fuel is placed in a fuel supply tank of a motor vehicle. The excise tax on C.N.G. attaches at the time of delivery into equipment for compressing the gas for subsequent delivery into the fuel supply tank of a motor vehicle. The person responsible for the tax must collect the tax from the purchaser and remit the tax to the department. The person responsible for the tax is:

1. The licensed L.P.G. or C.N.G. dealer, or
2. The licensed L.P.G. or C.N.G. user.

The person responsible for placing L.P.G. into the fuel supply tank of a vehicle and the person responsible for placing C.N.G. into compressing equipment must hold a license as a dealer or user as defined in Iowa Code section 452A.4.

The return and tax are due no later than the last day of the month following the month the L.P.G. was placed in a vehicle or C.N.G. was placed into compressing equipment. The tax must be remitted by means of electronic funds transfer, unless the licensee can show that this method of payment would cause undue hardship on the licensee and must be rounded to the nearest whole number. The return must be remitted by means of electronic transmission.

This rule is intended to implement Iowa Code section 452A.8 as amended by 2005 Iowa Acts, Senate File 413.

701—69.3(452A) Penalty and interest. See rules 701—10.6(421) and 701—10.2(421) for failure to timely file a return or for failure to timely pay the tax. See rule 701—10.8(421) for penalty exceptions. See rule 701—10.72(452A) for interest on refunds.

701—69.4(452A) Bonding procedure.

69.4(1) When required, classes of business and new applications for fuel tax permit. See 701—subrule 67.21(1), paragraphs *"a"* and *"b."*

69.4(2) Existing license holders. Existing license holders will be requested to post a bond or security when they have had two or more delinquencies in remitting the fuel tax or filing returns timely during the past 12 months when filing returns on a monthly basis. The bond or security will be an amount sufficient to cover 12 months' fuel tax liability or $500, whichever is greater. The simultaneous late filing of the return and the late payment of the tax will count as one delinquency. However, the late filing of the return or late payment of the tax will not count as a delinquency if the license holder can satisfy one of the conditions set forth in Iowa Code section 421.27 (penalty waiver). For waiver of bond see 701—paragraph 67.21(1)*"e."*

69.4(3) Type of security. See 701—subrule 67.21(2).

701—69.5(452A) Persons authorized to place L.P.G. or C.N.G. in the fuel supply tank of a motor vehicle. The only persons authorized to place L.P.G. or C.N.G. into the fuel supply tank of a motor vehicle are: licensed L.P.G. or C.N.G. dealers, or licensed L.P.G. or C.N.G. users.

69.5(1) *L.P.G. or C.N.G. dealer's license.* Anyone who delivers L.P.G. into the fuel supply tank of a motor vehicle or places C.N.G. into compression equipment which tank is owned by some other person must be licensed as an L.P.G. or C.N.G. dealer. A dealer may also fuel the dealer's own vehicles under this license.

69.5(2) *L.P.G. or C.N.G. user's license.* Anyone who delivers L.P.G. or C.N.G. into the fuel supply tank of a motor vehicle, which tank is owned or leased by the person delivering it, must be licensed as an L.P.G. or C.N.G. user. If that same person delivers the fuel into tanks owned by others, that person must be licensed as a dealer in lieu of being licensed as a user.

69.5(3) *L.P.G. "mobile" tank exemption.* When a person has an L.P.G. storage tank which is "mobile" and the storage is moved from location to location, that person may be issued an L.P.G. user's license. This licensee will be allowed to move the storage tank to a new location without procuring a new license for each new location. The issuance of this license is discretionary with the director, and the license will be issued only when the person requesting the license shows a need for mobile storage. The license will be issued to the licensee at the licensee's principal place of business, and each mobile storage tank is deemed a separate pump at that location.

The operation of such licensed mobile storage shall be subject to the following conditions:

a. Each mobile storage tank must be fixed with licensed, metered pumps.

b. Each mobile storage tank shall be assigned a separate number, and the gallonage shall be reported on a per-tank basis.

c. Each mobile storage tank shall have printed thereon, in strokes not less than six inches in height and three-fourths inches in width, the unit number and licensee's license number.

d. There may be a total of only nine mobile storage tanks operated under a single license. If the licensee operates more than nine such storage tanks, the licensee must obtain a separate license for each multiple of nine or fraction thereof.

e. When a licensee changes the licensee's principal place of business, the license shall be canceled and the person must apply for a new license.

f. All records required to be kept shall be maintained at the licensee's principal place of business.

g. Except for the requirement of having a separate license for each location where L.P.G. is used, the licensee shall be subject to all the requirements of other licensed L.P.G. users.

69.5(4) *Exemption for emergency filling by distributors.* Upon request from a stranded motorist, an L.P.G. distributor may place up to 20 gallons of L.P.G. into the fuel supply tank of the stranded vehicle without being considered by the department in violation of Iowa Code section 452A.74(5) (acting as an L.P.G. dealer without a license); however, the distributor must remit the tax thereon on a licensed dealer form and pay the tax before the last day of the month following the month of the emergency fill.

This rule is intended to implement Iowa Code section 452A.8.

701—69.6(452A) Requirements to be licensed. To become licensed as an L.P.G. or C.N.G. user or dealer, a person must file with the department a completed application form for the appropriate license. A separate license is required for each place of business or location where L.P.G. or C.N.G. is regularly delivered or placed into the fuel supply tank of motor vehicles. See Iowa Code section 452A.4 and 701—subrule 67.23(1) for licensing requirements.

This rule is intended to implement Iowa Code section 452A.8.

701—69.7(452A) Licensed metered pumps. Before an L.P.G. or C.N.G. dealer's or user's license can be issued, all pumps designed to fuel motor vehicles at the location to be licensed must be (1) metered, (2) inspected, (3) tested for accuracy, (4) sealed, and (5) licensed by the department of agriculture and land stewardship. (See 1970 O.A.G. 2.) If there is more than one pump at a location to be licensed, each pump will be assigned a separate pump number, and the licensee shall report the gallon-age each month with reference to such number.

Each special fuel L.P.G. distributor, dealer, or user may elect to measure L.P.G. for the tax purposes either temperature compensated to 60° F, or without temperature compensation. If the special fuel L.P.G. distributor, dealer or user elects to measure L.P.G. temperature compensated to 60° F for tax purposes, the L.P.G. distributor, dealer or user must use meters which are of an automatic temperature compensating type which shall compute gross gallons corrected to 60° F.

This rule is intended to implement Iowa Code section 452A.8.

701—69.8(452A) Single license for each location. A single license is required for each separate place of business or location where L.P.G. or C.N.G. is delivered into the fuel supply tank of a motor vehicle. For reporting purposes (see rule 69.2(452A)) a licensee may file a separate return for each license; or, if arrangements have been made with the department, the licensee may file a consolidated return reporting all sales made at all locations for which a license is held. However, a consolidated return may not be used to combine dealer and user operations. All working papers used in the preparation of the information required must be available for examination by the department. All dealer or user operations at that location will be conducted under that license. A licensee may have a different type of license (dealer, user) for each separate location where L.P.G. or C.N.G. is dispensed. For instance, if a licensee holds an L.P.G. or C.N.G. dealer's license for location A and an L.P.G. or C.N.G. user's license for location B, the licensee may sell fuel to others or fuel the licensee's own vehicles at location A, but may only fuel the licensee's own vehicles at location B.

This rule is intended to implement Iowa Code section 452A.8.

701—69.9(452A) Dealer's and user's license nonassignable. An L.P.G. or C.N.G. dealer's license or user's license cannot be assigned. The following nonexclusive situations will be considered an assignment:

1. A change in the name under which the licensee conducts business.
2. A change in the location where the business is conducted.
3. A sale of the business (even if the new owner(s) operates under the same business name).

4. A merger or other business combination which results in a new or different entity.

This rule is intended to implement Iowa Code section 452A.8.

701—69.10(452A) Separate storage—bulk sales—highway use. If a person is operating as an L.P.G. dealer's or user's licensee and also makes bulk sales for nonhighway use, there must be separate storage for bulk sales and sales for highway. If any amount of L.P.G. in a storage facility is to be used directly from that storage for highway purposes or if the storage is connected to a device which is designed in such a way as to be able to fuel motor vehicles, all fuel dispensed from the storage shall be dispensed through licensed metered pumps. Tax will be paid on the fuel dispensed which is not exempt as evidenced by exemption certificates.

This rule is intended to implement Iowa Code section 452A.8.

701—69.11(452A) Combined storage—bulk sales—highway sales or use. If a person is operating as an L.P.G. dealer's or user's licensee, L.P.G. may be dispensed for bulk nontaxable sales and for taxable highway sales from the same storage if, and only if, the following requirements are complied with:

1. All pumps which are of such a design to be able to fuel motor vehicles must be licensed, sealed, metered, and inspected as provided in rule 69.5(452A).
2. All fuel passing through the pumps is taxed unless supported by exemption certificates.
3. All pumps which are not licensed, sealed, metered, and inspected must be of such a design that it is impossible to use them to place fuel into the fuel supply tank of a motor vehicle.
4. Accurate records must be kept showing all purchases of fuel and all nontaxable bulk sales of fuel.

All L.P.G. which is placed in this combined storage is presumed to be for highway use and taxable unless supported by exemption certificates (for fuel passing through the licensed pumps) or detailed records showing bulk sales for nonhighway use or to other users or dealers (for fuel passing through the nonlicensed pumps). (See 1968 O.A.G. 592.) If at any time the licensee fails to comply with the requirements of this rule, separate storage for taxable sales and nontaxable bulk sales will be required under rule 69.10(452A).

This rule is intended to implement Iowa Code section 452A.8.

701—69.12(452A) Exemption certificates. If L.P.G. is dispensed from metered highway storage for other than highway purposes, an exemption certificate must be completed by the seller and signed by the purchaser. The certificate is to be retained by the dealer or user. The exemption certificate must include, but not be limited to, the following information: the date, the seller's name, the seller's dealer (user) license number, the invoice number covering the fuel sold (if sold by a dealer), an indication of the use to which the fuel will be put, and the name, address, and signature of the purchaser (user). The exemption certificate will be provided by the department or a dealer or user may provide the exemption certificate provided it contains all information required by the director.

These exempt sales of L.P.G. from metered highway storage shall be limited to the following uses:

1. Placed directly into a fuel supply tank which is connected to the heating or cooling unit installed on a highway "reefer" unit, provided the fuel supply tank is not connected nor has provisions for connection directly or indirectly to the power source of the highway motor vehicle.
2. Placed directly into the fuel supply tank of a nonhighway motor vehicle.
3. L.P.G. placed into carry-out containers.

All other sales for other than highway use must be from bulk storage and not from metered highway storage. (See rule 701—68.13(452A), sales tax.)

This rule is intended to implement Iowa Code section 452A.8.

701—69.13(452A) L.P.G. sold to the state of Iowa, its political subdivisions, contract carriers under contract with public schools to transport pupils or regional transit systems.

69.13(1) If L.P.G. is sold to the state of Iowa, its agencies, a political subdivision of the state, or a regional transit system for public use, or a use specified in Iowa Code section 452A.57(11), and placed

in storage, it may be sold tax-free. Fuel sold by a dealer and delivered directly into the fuel supply tank of a motor vehicle must be sold tax-paid. Since the L.P.G. delivered into storage is not subject to tax, the governmental unit or regional transit system need not be licensed as a special fuel user. However, if the L.P.G. is used by a governmental unit or regional transit system for other than "public purposes," or a purpose specified in Iowa Code section 452A.57(11), it must obtain a user's license and pay the tax on all highway L.P.G. used from the storage.

69.13(2) L.P.G. sold to a contract carrier under contract with public schools to transport pupils. When special fuel is sold directly to contract carriers who have a contract with a public school under Iowa Code section 285.5 for the transportation of pupils of an approved public or nonpublic school, the fuel shall be sold tax-paid.

If the contract carrier is licensed as an L.P.G. fuel dealer or user, the licensee may buy the fuel tax-free, but the tax must be remitted on the monthly dealer or user return.

Any contract carrier who has paid the tax is entitled to a refund. A refund requested by contract carriers will be reduced by the applicable sales tax, unless otherwise exempt. All contract carriers must apply to the department for a refund registration even if they currently hold a motor fuel tax license.

The refund will be allowed pursuant to the provisions of 701—subrule 68.8(4).

This rule is intended to implement Iowa Code sections 452A.3 and 452A.17.

701—69.14(452A) Refunds. Refunds of taxes paid on L.P.G. used for other than highway use are available. See rule 701—68.8(452A). The refunds are available if the tax has been paid, the L.P.G. is used other than to propel motor vehicles, the person requesting the refund has a refund permit, and the claim is filed within the appropriate time and in the appropriate manner. The income tax credit set forth in rule 701—68.12(452A) shall apply equally to special fuel.

This rule is intended to implement Iowa Code section 452A.17.

701—69.15(452A) Notice of meter seal breakage. Whenever a meter is required under Iowa Code chapter 452A, pursuant to the director's power granted under Iowa Code section 452A.59, and said meter is required to be sealed by Iowa Code chapter 452A, (C.N.G. or L.P.G. dealer and user meters) the department must be notified within 24 hours of the breaking of the seal for any reason. Notice shall contain, but not be limited to, the following information:

1. The name, address, and license number of the person who controls the meter.
2. The meter number.
3. The type of fuel pumped through the meter.
4. The date of seal breakage.
5. The name and address of the person(s) responsible for the seal breakage.
6. The reason for seal breakage.
7. The meter reading before seal breakage.
8. The meter reading after the meter is resealed.
9. The signature of the person who controls the meter.

For reporting purposes, the meter shall be considered two meters, one before the seal breakage and one after, and should be reported on that basis, noting the seal breakage on the return. The meter readings of the meter before the seal breakage shall be reported by meter number as usual. The meter readings after the meter was resealed shall be reported by using the meter number plus the letter "A." The two readings must appear on the same return schedule.

This rule is intended to implement Iowa Code sections 452A.3 and 452A.8 as amended by 1999 Iowa Acts, Senate File 136, and Iowa Code sections 452A.59 and 452A.62.

701—69.16(452A) Location of records—L.P.G. or C.N.G. users and dealers. The records required to be prepared and kept by L.P.G. or C.N.G. dealers and users under Iowa Code section 452A.10 and 701—subrule 67.3(5) must be maintained at the location that appears on the license unless the following conditions are met:

69.16(1) If the licensee has more than one license, all of the records for each separate license may be kept at a central location so long as the records for each license are kept separated.

69.16(2) The central location where the records are kept is within the state unless:

a. The licensee agrees to bring the records back into the state when requested to do so by the department for purposes of audit, or

b. The licensee agrees to pay the cost (as defined in rule 701—67.4(452A)) of an out-of-state audit.

This rule is intended to implement Iowa Code sections 452A.10 and 452A.74(2).

All rules in 701—Chapters 67 and 68 apply if not specifically stated in this chapter.

The rules in 701—Chapters 67, 68, and 69 are effective for periods beginning on or after January 1, 1996.

See 701—Chapters 63, 64 and 65 for rules in effect on or prior to December 31, 1995.

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TITLE IX
PROPERTY

CHAPTER 70
REPLACEMENT TAX AND STATEWIDE PROPERTY TAX

DIVISION I
REPLACEMENT TAX

701—70.1(437A) Who must file return. Each taxpayer, as defined in Iowa Code Supplement section 437A.3(30), shall file a true and accurate return with the director. The return shall include all of the information prescribed in Iowa Code sections 437A.8(1)*"a"* through *"f"* and any other information or schedules requested by the director. The return shall be signed by an officer or other person duly authorized by the taxpayer and must be certified as correct. If the taxpayer was inactive or ceased the conduct of any activity subject to the replacement tax during the tax year, the return must contain a statement to that effect.

701—70.2(437A) Time and place for filing return. The return must be filed with the director on or before March 31 following the tax year. There is no authority for the director to grant an extension of time to file a return. Therefore, any return which is not filed on or before March 31 following the tax year is untimely.

A taxpayer whose replacement tax liability before credits is $300 or less is not required to file a return. A taxpayer should not file a replacement tax return under such circumstances.

When the due date falls on a Saturday or Sunday, the return will be due the first business day following the Saturday or Sunday. If a return is placed in the mails, properly addressed and postage paid in ample time to reach the director or the department on or before the due date for filing, no penalty will attach should the return not be received until after that date. The functional meaning of this requirement is that if the return is placed in the mails, properly addressed and postage paid, on or before the due date for filing, no penalty will attach. Mailed returns should be addressed to Department of Revenue, Attention: Property Tax Division, Hoover State Office Building, Des Moines, Iowa 50319.

701—70.3(437A) Form for filing. Returns must be made by taxpayers on forms supplied by the department. Taxpayers not supplied with the proper forms shall make application for same to the department in ample time to have their returns made, verified and filed on or before the due date. Each taxpayer shall carefully prepare the taxpayer's return so as to fully and clearly set forth the data required. All information shall be supplied and each direction complied with in the same manner as if the forms were embodied in these rules.

Failure to receive the proper forms does not relieve the taxpayer from the obligation of making the replacement tax return.

Returns received which are not completed, but merely state "see schedule attached," "no tax due," or some other conclusionary statement are not considered to be a properly filed return and may be returned to the taxpayer for proper completion. This may result in the imposition of penalties and interest due to the return's being filed after the due date.

701—70.4(437A) Payment of tax. Payment of tax shall not accompany the filing of the replacement tax return with the director. Payment of tax shall never be made to the director or the state of Iowa. Payment of the proper amount of tax due shall be made to the appropriate county treasurer upon notification by the county treasurer to the taxpayer of the taxpayer's replacement tax obligation.

701—70.5(437A) Statute of limitations.

70.5(1) The director has three years after a return is filed to determine the tax due if the return is found to be incorrect and to give notice to the taxpayer of the determination. This three-year statute of limitations does not apply in the instances specified in 70.5(2).

70.5(2) If a taxpayer files a false or fraudulent return with the intent to evade any tax, the correct amount of tax due may be determined by the director at any time after the return has been filed.

70.5(3) If a taxpayer fails to file a return, the three-year period of limitations does not begin to run until the return is filed with the director.

70.5(4) Waiver of statute of limitations. The department and the taxpayer may extend the three-year period of limitations provided in 70.5(1) above by signing a waiver agreement form provided by the department. The agreement shall designate the period of extension and the tax year for which the extension applies. The agreement shall provide that the taxpayer may file a claim for refund of replacement tax at any time prior to the expiration of the agreement.

701—70.6(437A) Billings.

70.6(1) *Notice of adjustments.*

a. An agent, auditor, clerk, or employee of the department, designated by the director to examine returns and make audits, who discovers discrepancies in returns or learns that items subject to tax may not have been listed or included as taxable, in whole or in part, or that no return was filed when one was due, is authorized to notify the person of this discovery by ordinary mail. This notice is not an assessment. It informs the person what amount would be due if the information discovered is correct. A copy of such notice shall also be sent to the appropriate county treasurer.

b. Right of person upon receipt of notice of adjustment. A person who has received notice of an adjustment in connection with a return may pay the additional amount stated to be due to the appropriate county treasurer. If payment is made, and the person wishes to contest the matter, the person should file a timely claim for refund. However, payment will not be required until an assessment has been made (although interest will continue to accrue if timely payment is not made). If no payment has been made, the person may discuss with the agent, auditor, clerk, or employee who notified the person of the discrepancy, either in person or through correspondence, all matters of fact and law which may be relevant to the situation. This person may also ask for a conference with the Department of Revenue, Property Tax Division, Hoover State Office Building, Des Moines, Iowa. Documents and records supporting the person's position may be required.

c. Power of agent, auditor, or employee to compromise tax claim. No employee of the department has the power to compromise any tax claims. The power of the agent, auditor, clerk, or employee who notified the person of the discrepancy is limited to the determination of the correct amount of tax.

70.6(2) *Notice of assessment.* If, after following the procedure outlined in 70.6(1)*"b,"* no agreement is reached and the person does not pay the amount determined to be correct to the appropriate county treasurer, a notice of the amount of tax due shall be sent to the taxpayer. This notice of assessment shall bear the signature of the director and will be sent by ordinary mail to the taxpayer with a copy sent to the appropriate county treasurer.

A taxpayer has 60 days from the date of the notice of assessment to file a protest according to the provisions of rule 701—7.41(17A) or, if the taxpayer fails to timely appeal a notice of assessment, the taxpayer may make payment pursuant to rule 701—7.41(17A) to the appropriate county treasurer and file a refund claim with the director within the applicable period provided in Iowa Code section 437A.14(1)*"b"* for filing such claims.

70.6(3) *Supplemental assessments and refund adjustments.* The director may, at any time within the period prescribed for assessment or refund adjustment, make a supplemental assessment or refund adjustment whenever it is ascertained that any assessment or refund adjustment is imperfect or incomplete in any respect.

If an assessment or refund adjustment is appealed (protested under rule 701—7.41(17A)) and is resolved whether by informal proceedings or by adjudication, the director shall notify the appropriate county treasurer. Such resolution shall preclude the director and the taxpayer from making a supplemental assessment or refund adjustment concerning the same issue involved in the appeal for the same tax year unless there is a showing of mathematical or clerical error or showing of fraud or misrepresentation.

701—70.7(437A) Refunds.

70.7(1) A claim for refund of replacement tax may be made on a form obtainable from the department. All claims for refund should be filed with the director, and not with the county treasurer. In the case of a refund claim filed by an agent or representative of the taxpayer, a power of attorney must accompany the claim. All claims for refund must be in writing.

70.7(2) A taxpayer shall not offset a refund or overpayment of tax for one tax year as a prior payment of tax of a subsequent tax year on the tax return of a subsequent year unless the provisions of Iowa Code section 437A.8(7) are applicable.

70.7(3) Refunds—statute of limitations. The statute of limitations with respect to which refunds or credits may be claimed are:

a. The later of three years after the due date of the tax payment upon which the refund or credit is claimed; or one year after which such payment was actually made.

b. Ninety days after the due date of the tax payment upon which refund or credit is claimed if the tax is alleged to be unconstitutional.

70.7(4) No credit or refund of taxes alleged to be unconstitutional shall be allowed if such taxes were not paid to the appropriate county treasurer under written protest which specifies the particulars of the alleged unconstitutionality.

70.7(5) The taxpayer responsible for paying the tax, or the taxpayer's successors, are the only persons eligible to file claims for refund or credit of the tax with the director and are the only persons eligible to receive such refunds or credits.

70.7(6) The director will promptly notify the appropriate county treasurer of the acceptance or denial of any refund claim or credit. The county treasurer shall pay the refund claim or portion thereof accepted by the director.

70.7(7) A taxpayer has 60 days from the date of the notice of denial of a refund or credit, in whole or in part, to file a protest according to the provisions of rule 701—7.41(17A).

701—70.8(437A) Abatement of tax. The provisions of rules 701—7.31(421) and 7.38(421,17A) are applicable to replacement tax. In the event that the taxpayer files a request for abatement with the director, the appropriate county treasurer shall be notified. The director's decision on the abatement request shall be sent to the taxpayer and the appropriate county treasurer.

701—70.9(437A) Taxpayers required to keep records.

70.9(1) Records required. The records required in this rule must be made available for examination upon request by the director or the director's authorized representative. The records must include all of those which would support the entries required to be made on the tax return. These records include but are not limited to:

a. Records associated with the number of taxable kilowatt-hours of electricity delivered to consumers by the taxpayer within each electric competitive service area during the tax year. Such records shall also include those for calendar year 1998.

b. Records associated with the number of taxable kilowatt-hours of electricity consumed within each electric competitive service area during the tax year where the delivery of such electricity is not subject to the replacement delivery tax.

c. Records associated with the average centrally assessed property tax liability allocated to electric service of each taxpayer, other than a municipal utility, principally serving an electric competitive service area and of each generation and transmission electric cooperative for the assessment years 1993 through 1997. For municipal utilities, such records shall be for the 1997 assessment year and shall also include records associated with items in 1999 Iowa Acts, Senate File 473, section 30.

d. Records associated with the number of taxable kilowatt-hours of electricity generated within the state of Iowa during the tax year. Such records shall also include those for calendar year 1998.

e. Records associated with taxable pole miles of transmission lines owned or leased by the taxpayer for each of the line voltage tiers subject to tax imposed in Iowa Code section 437A.7. Such records shall also include those for calendar year 1998.

f. Records associated with the excess property tax liability of each generation and transmission electric cooperative assigned to the electric competitive service areas principally served on January 1, 1999, by its distribution electric cooperative members and by those municipal utilities which were purchasing members of a municipal electric cooperative association that is a member of the generation and transmission electric cooperative. Such records shall include those for calendar year 1998. "Excess property tax liability" means the amount by which the average centrally assessed property tax liability for the assessment years 1993 through 1997 of a generation and transmission electric cooperative exceeds the tentative generation and transmission taxes which would have been imposed on such generation and transmission electric cooperative under Iowa Code sections 437A.6 and 437A.7 for calendar year 1998.

g. Records associated with the number of taxable therms of natural gas delivered to consumers by the taxpayer within each natural gas competitive service area during the tax year. Such records shall also include those for calendar year 1998.

h. Records associated with the number of taxable therms of natural gas consumed within each natural gas competitive service area during the tax year where the delivery of such natural gas is not subject to the replacement delivery tax.

i. Records associated with the average centrally assessed property tax liability allocated to natural gas service of each taxpayer, other than a municipal utility, principally serving a natural gas competitive service area for the assessment years 1993 through 1997. For municipal utilities, such records shall be for the 1997 assessment year and shall also include records associated with items in 1999 Iowa Acts, Senate File 473, section 30.

j. Records associated with the taxpayer's calculation of the tentative replacement taxes due for the tax year and required to be shown on the tax return.

k. Records associated with increases or decreases in the tentative replacement tax required to be shown to be due where the electric and natural gas delivery tax rates are subject to recalculation under the provisions of Iowa Code section 437A.8(7).

l. Records associated with the kilowatt-hours of electricity and the therms of natural gas entitled to be exempted from the taxes imposed by Iowa Code sections 437A.4 to 437A.7 by the enumerated exemptions therein.

m. Records associated with kilowatt-hours of electricity and therms of natural gas delivered in a manner set forth in Iowa Code sections 437A.4(7) and 437A.5(6).

n. All work papers associated with any of the records described in this rule.

o. Records pertaining to any additions or deletions of property described as exempt from local property tax in Iowa Code section 437A.16.

p. Records associated with allocation of property described in paragraph *"o"* above among local taxing districts.

70.9(2) The records required to be maintained by these rules shall be maintained by taxpayers for a period of ten years following the later of the original due date for the filing of a tax return in which the replacement taxes are reported, or the date on which such return is filed. Upon application to the director and for good cause shown, the director may shorten the period for which any records should be maintained by a taxpayer.

701—70.10(437A) Credentials. Employees of the department have official credentials, and the taxpayer should require proof of the identity of persons claiming to represent the department. No charges shall be made nor gratuities of any kind accepted by an employee of the department for assistance given in or out of the office of the department.

701—70.11(437A) Audit of records. The director or the director's authorized representative shall have the right to examine or cause to be examined the books, papers, records, memoranda or documents of a taxpayer for the purpose of verifying the correctness of a tax return filed, of information presented, or for estimating the tax liability of a taxpayer. When a taxpayer fails or refuses to produce the records for examination upon request, the director shall have authority to require, by a subpoena, the attendance of the taxpayer and any other witness(es) whom the director deems necessary or expedient to examine

and compel the taxpayer and witness(es) to produce books, papers, records, memoranda or documents relating in any manner to the replacement tax.

701—70.12(437A) Collections/reimbursements. Neither the director nor the department is empowered to receive any payment of replacement tax. Therefore, taxpayers should never pay any replacement tax to the director or the state of Iowa. All payments of replacement tax are to be made to the appropriate county treasurer.

70.12(1) A person in possession of a renewable energy tax credit certificate issued pursuant to Iowa Code chapter 476C or a wind energy tax credit issued pursuant to chapter 476B as amended by 2008 Iowa Acts, Senate File 2405, may apply to the director for a reimbursement of the amount of taxes imposed and paid by the person pursuant to Iowa Code chapter 437A in an amount not more than the person received in renewable energy tax credit certificates or wind energy tax credit certificates. To obtain the reimbursement, the person shall attach to the return required under Iowa Code section 437A.8 the renewable energy tax credit certificates or the wind energy tax credit certificates and provide any other information the director may require. The director shall direct that a warrant be issued to the person for an amount equal to the tax imposed and paid by the person. Any credit in excess of the person's tax liability may be claimed as a refund for the following seven years. Pursuant to Iowa Code section 437A.14, a taxpayer may file a claim for refund with the director within three years after the replacement tax became due. If the renewable energy or wind energy tax credit claim exceeds the replacement tax due in a year, the taxpayer has seven years to carry over the excess credit. Pursuant to Iowa Code section 476C.4(6), a person may not receive both a renewable energy tax credit and a wind energy tax credit. The reimbursement applies to a qualified facility placed in service on or after July 1, 2005, but before July 1, 2012. The utilities board shall notify the department of revenue of the amount of kilowatt hours of electricity purchased from a renewable energy facility or the amount of kilowatt hours generated and purchased from a qualified wind energy facility or generated and used on site by the qualified wind energy facility. The department of revenue shall calculate the amount of the tax credit and issue the tax credit certificate. Wind energy and renewable energy tax credit certificates may be transferred, and a replacement tax credit certificate may reflect a different type of tax than the type of tax noted on the original tax credit certificate.

70.12(2) A person in possession of a soy-based transformer fluid tax credit certificate issued pursuant to Iowa Code chapter 476D may apply to the director for a reimbursement of the amount of taxes imposed and paid by the person pursuant to Iowa Code chapter 437A in an amount not more than the person received in soy-based transformer fluid tax credit certificates. To obtain the reimbursement, the person shall attach to the return required under section 437A.8 the soy-based transformer fluid tax credit certificates issued to the person and provide any other information the director may require. The director shall direct a warrant to be issued to the person for an amount equal to the tax imposed and paid by the person pursuant to Iowa Code chapter 437A but for not more than the amount of the soy-based transformer fluid tax credit certificates attached to the return. This subrule is rescinded December 31, 2009.

This rule is intended to implement Iowa Code section 437A.17B, chapter 476B as amended by 2008 Iowa Acts, Senate File 2405; section 437A.17C and chapter 476D as amended by 2008 Iowa Acts, Senate File 572; and chapter 476C.

701—70.13(437A) Information confidential. Iowa Code subsections 437A.14(2) and (3) apply generally to the director, deputies, auditors, and present or former officers and employees of the department. Disclosure of the kilowatt-hours of electricity or therms of natural gas delivered by a taxpayer in a competitive service area disclosed on a tax return, return information, or investigative or audit information is prohibited. Other persons having acquired this confidential information will be bound by the same rules of secrecy under these Iowa Code provisions as any member of the department and will be subject to the same penalties for violations as provided by law.

DIVISION II
STATEWIDE PROPERTY TAX

701—70.14(437A) Who must file return. Each taxpayer shall file a true and accurate return with the director. The return shall include all of the information prescribed in Iowa Code section 437A.21 and any other information or schedules requested by the director. The return shall be signed by an officer or other person duly authorized by the taxpayer and must be certified as correct. If the taxpayer was inactive or ceased the conduct of any activity for which the taxpayer's property was subject to the statewide property tax during the tax year, the return must contain a statement to that effect.

701—70.15(437A) Time and place for filing return. The return must be filed with the director on or before March 31 following the tax year. There is no authority for the director to grant an extension of time to file a return. Therefore, any return which is not filed on or before March 31 following the tax year is untimely.

When the due date falls on a Saturday or Sunday, the return will be due the first business day following the Saturday or Sunday. If a return is placed in the mails, properly addressed and postage paid in ample time to reach the director or the department on or before the due date for filing, no penalty will attach should the return not be received until after that date. The functional meaning of this requirement is that if the return is placed in the mails, properly addressed and postage paid, on or before the due date for filing, no penalty will attach. Mailed returns should be addressed to Department of Revenue, Attention: Property Tax Division, Hoover State Office Building, Des Moines, Iowa 50319.

701—70.16(437A) Form for filing. Replacement tax rule 70.3(437A) is incorporated herein by reference.

701—70.17(437A) Payment of tax. Payment of the tax required to be shown due on the statewide property tax return shall accompany the filing of the return. All checks shall be made payable to Treasurer, State of Iowa. Failure to pay the tax required to be shown due on the tax return by the due date shall render the tax delinquent.

701—70.18(437A) Statute of limitations. Replacement tax rule 70.5(437A) is incorporated herein by reference.

701—70.19(437A) Billings.

70.19(1) *Notice of adjustments.* Replacement tax subrule 70.6(1) is incorporated herein by reference.

70.19(2) *Notice of assessment.* If, after following the procedure outlined in 70.6(1)*"b,"* no agreement is reached and the person does not pay the amount determined to be correct to the director, a notice of the amount of tax due shall be sent to the taxpayer. This notice of assessment shall bear the signature of the director and will be sent by ordinary mail to the taxpayer.

A taxpayer has 60 days from the date of the notice of assessment to file a protest according to the provisions of rule 701—7.41(17A) or, if the taxpayer fails to timely appeal a notice of assessment, the taxpayer may make payment pursuant to rule 701—7.41(17A) to the director and file a refund claim with the director within the applicable period provided in Iowa Code sections 437A.22 and 437A.14(1)*"b"* for filing such claims.

70.19(3) *Supplemental assessments.* Replacement tax subrule 70.6(3) is incorporated by reference.

701—70.20(437A) Refunds. Replacement tax subrules 70.7(1) to 70.7(3), 70.7(5) and 70.7(7) are incorporated herein by reference.

No credit or refund of taxes alleged to be unconstitutional shall be allowed if such taxes were not paid under written protest which specifies the particulars of the alleged unconstitutionality.

701—70.21(437A) Abatement of tax. The provisions of rules 701—7.31(421) and 7.38(421,17A) are applicable to the statewide property tax.

701—70.22(437A) Taxpayers required to keep records.

70.22(1) Records required. The records required in this rule must be made available for examination upon request by the director or the director's authorized representative. The records must include all of those which would support the entries required to be made on the tax return. These records include but are not limited to:

a. Records associated with the assessed value and base year assessed value of property subject to the statewide property tax.

b. Records associated with the computation of the statewide property tax required to be shown due on the tax return.

c. Records associated with the book value of the local amount of any major addition by local taxing district.

d. Records associated with the book value of the statewide amount of any major addition.

e. Records associated with the transfer or disposal of all operating property in the preceding calendar year, by local taxing district.

f. Records associated with the book value of all other taxpayer property subject to the statewide property tax.

g. Records associated with the book value of any major addition, by situs, eligible for the urban revitalization exemption provided for in Iowa Code chapter 404.

h. All work papers associated with any of the records described in this rule.

i. Records associated with allocation of property subject to statewide property tax among local taxing districts.

70.22(2) The records required to be maintained by these rules shall be maintained by taxpayers for a period of ten years following the later of the original due date for the filing of a tax return in which the statewide property tax is reported, or the date on which such return is filed. Upon application to the director and for good cause shown, the director may shorten the period for which any records should be maintained by a taxpayer.

701—70.23(437A) Credentials. Replacement tax rule 70.10(437A) is incorporated herein by reference.

701—70.24(437A) Audit of records. Replacement tax rule 70.11(437A) is incorporated herein by reference.

These rules are intended to implement Iowa Code chapter 437A as amended by 2007 Iowa Acts, Senate File 278.

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CHAPTER 71
ASSESSMENT PRACTICES AND EQUALIZATION
[Prior to 12/17/86, Revenue Department[730]]

701—71.1(405,427A,428,441,499B) Classification of real estate.

71.1(1) *Responsibility of assessors.* All real estate subject to assessment by city and county assessors shall be classified as provided in this rule. It shall be the responsibility of city and county assessors to determine the proper classification of real estate. There can be only one classification per property. An assessor shall not assign one classification to the land and a different classification to the building or separate classifications to the land or separate classifications to the building (dual classification). A building or structure on leased land is considered a separate property and may be classified differently than the land upon which it is located. The determination shall be based upon the best judgment of the assessor following the guidelines set forth in this rule and the status of the real estate as of January 1 of the year in which the assessment is made. The assessor shall classify and value property according to its present use and not according to its highest and best use. For example, property currently used as a golf course shall be assessed and valued by the assessor as a golf course even though its highest and best potential use may be an industrial park or commercial development. See subrule 71.1(8) for an exception to the general rule that property is to be classified according to its use. The classification shall be utilized on the abstract of assessment submitted to the department of revenue pursuant to Iowa Code section 441.45. See rule 71.8(428,441).

71.1(2) *Responsibility of boards of review, county auditors, and county treasurers.* Whenever local boards of review, county auditors, and county treasurers exercise assessment functions allowed or required by law, they shall classify property as provided in this rule and adhere to the requirements of this rule.

71.1(3) *Agricultural real estate.* Agricultural real estate shall include all tracts of land and the improvements and structures located on them which are in good faith used primarily for agricultural purposes except buildings which are primarily used or intended for human habitation as defined in subrule 71.1(4). Land and the nonresidential improvements and structures located on it shall be considered to be used primarily for agricultural purposes if its principal use is devoted to the raising and harvesting of crops or forest or fruit trees, the rearing, feeding, and management of livestock, or horticulture, all for intended profit.

Vineyards and any buildings located on a vineyard and used in connection with the vineyard shall be classified as agricultural real estate if the primary use of the land and buildings is an activity related to the production or sale of wine.

Agricultural real estate shall also include woodland, wasteland, and pastureland, but only if that land is held or operated in conjunction with agricultural real estate as defined in this subrule.

71.1(4) *Residential real estate.* Residential real estate shall include all lands and buildings which are primarily used or intended for human habitation, including those buildings located on agricultural land. Buildings used primarily or intended for human habitation shall include the dwelling as well as structures and improvements used primarily as a part of, or in conjunction with, the dwelling. This includes but is not limited to garages, whether attached or detached, tennis courts, swimming pools, guest cottages, and storage sheds for household goods. Residential real estate located on agricultural land shall include only buildings as defined in this subrule. Buildings for human habitation that are used as commercial ventures, including but not limited to hotels, motels, rest homes, and structures containing three or more separate living quarters shall not be considered residential real estate. However, regardless of the number of separate living quarters, multiple housing cooperatives organized under Iowa Code chapter 499A and land and buildings owned and operated by organizations that have received tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, if the rental income from the property is not taxed as unrelated business income under Iowa Code section 422.33(1A), shall be considered residential real estate.

An apartment in a horizontal property regime (condominium) referred to in Iowa Code chapter 499B which is used or intended for use for human habitation shall be classified as residential real estate

regardless of who occupies the apartment. Existing structures shall not be converted to a horizontal property regime unless building code requirements have been met.

71.1(5) *Commercial real estate.* Commercial real estate shall include all lands and improvements and structures located thereon which are primarily used or intended as a place of business where goods, wares, services, or merchandise is stored or offered for sale at wholesale or retail. Commercial realty shall also include hotels, motels, rest homes, structures consisting of three or more separate living quarters and any other buildings for human habitation that are used as a commercial venture. Commercial real estate shall also include data processing equipment as defined in Iowa Code section 427A.1(1)*"j,"* except data processing equipment used in the manufacturing process. However, regardless of the number of separate living quarters or any commercial use of the property, single- and two-family dwellings, multiple housing cooperatives organized under Iowa Code chapter 499A, and land and buildings used primarily for human habitation and owned and operated by organizations that have received tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, if the rental income from the property is not taxed as unrelated business income under Iowa Code section 422.33(1A), shall be classified as residential real estate.

An apartment in a horizontal property regime (condominium) referred to in Iowa Code chapter 499B which is used or intended for use as a commercial venture, other than leased for human habitation, shall be classified as commercial real estate. Existing structures shall not be converted to a horizontal property regime unless building code requirements have been met.

71.1(6) *Industrial real estate.*

a. Land and buildings.

(1) Industrial real estate includes land, buildings, structures, and improvements used primarily as a manufacturing establishment. A manufacturing establishment is a business entity in which the primary activity consists of adding to the value of personal property by any process of manufacturing, refining, purifying, the packing of meats, or the combination of different materials with the intent of selling the product for gain or profit. Industrial real estate includes land and buildings used for the storage of raw materials or finished products and which are an integral part of the manufacturing establishment, and also includes office space used as part of a manufacturing establishment.

(2) Whether property is used primarily as a manufacturing establishment and, therefore, assessed as industrial real estate depends upon the extent to which the property is used for the activities enumerated in subparagraph 71.1(6)*"a"*(1). Property in which the performance of these activities is only incidental to the property's primary use for another purpose is not a manufacturing establishment. For example, a grocery store in which bakery goods are prepared would be assessed as commercial real estate since the primary use of the grocery store premises is for the sale of goods not manufactured by the grocery and the industrial activity, i.e., baking, is only incidental to the store premises' primary use. However, property which is used primarily as a bakery would be assessed as industrial real estate even if baked goods are sold at retail on the premises since the bakery premises' primary use would be for an industrial activity to which the retail sale of baked goods is merely incidental. See *Lichty v. Board of Review of Waterloo,* 230 Iowa 750, 298 N.W. 654 (1941).

Similarly, a facility which has as its primary use the mixing and blending of products to manufacture feed would be assessed as industrial real estate even though a portion of the facility is used solely for the storage of grain, if the use for storage is merely incidental to the property's primary use as a manufacturing establishment. Conversely, a facility used primarily for the storage of grain would be assessed as commercial real estate even though a part of the facility is used to manufacture feed. In the latter situation, the industrial use of the property — the manufacture of feed — is merely incidental to the property's primary use for commercial purposes — the storage of grain.

(3) Property used primarily for the extraction of rock or mineral substances from the earth is not a manufacturing establishment if the only processing performed on the substance is to change its size by crushing or pulverizing. See *River Products Company v. Board of Review of Washington County,* 332 N.W.2d 116 (Iowa Ct. App. 1982).

b. Machinery.

(1) Machinery includes equipment and devices, both automated and nonautomated, which is used in manufacturing as defined in Iowa Code section 428.20. See *Deere Manufacturing Co. v. Beiner,* 247 Iowa 1264, 78 N.W.2d 527 (1956).

(2) Machinery owned or used by a manufacturer but not used within the manufacturing establishment is not assessed as industrial real estate. For example, "X" operates a factory which manufactures building materials for sale. In addition, "X" uses some of these building materials in construction contracts. The machinery which "X" would primarily use at the construction site would not be used in a manufacturing establishment and, therefore, would not be assessed as industrial real estate.

(3) Machinery used in manufacturing but not used in or by a manufacturing establishment is not assessed as industrial real estate. See *Associated General Contractors of Iowa v. State Tax Commission,* 255 Iowa 673, 123 N.W.2d 922 (1963).

(4) Where the primary function of a manufacturing establishment is to manufacture personal property that is consumed by the manufacturer rather than sold, the machinery used in the manufacturing establishment is not assessed as industrial real estate. See *Associated General Contractors of Iowa v. State Tax Commission,* 255 Iowa 673, 123 N.W.2d 922 (1963).

71.1(7) *Point-of-sale equipment.* As used in Iowa Code section 427A.1(1)*"j,"* the term "point-of-sale equipment" means input, output, and processing equipment used to consummate a sale and to record or process information pertaining to a sale transaction at the time the sale takes place and which is located at the counter, desk, or other specific point at which the transaction occurs. As used in this subrule, the term "sale" means the sale or rental of goods or services and includes both retail and wholesale transactions. Point-of-sale equipment does not include equipment used primarily for depositing or withdrawing funds from financial institution accounts.

71.1(8) *Housing development property.* A county board of supervisors may adopt an ordinance providing that property acquired and subdivided for development of housing be classified the same as it was prior to its acquisition until the property is sold or, depending on a county's population, for a specified number of years from the date of subdivision, whichever is shorter. The applicable time period is five years in counties with a population of less than 20,000 and three years in counties with a population of 20,000 or more. The property is to be classified as residential or commercial, whichever is applicable, in the assessment year following the year in which it is sold or the applicable time period has expired. For purposes of this subrule, "subdivided" means to divide a tract of land into three or more lots.

This rule is intended to implement Iowa Code sections 405.1, 427A.1, 428.4 and 441.22 and chapter 499B and Iowa Code Supplement section 441.21 as amended by 2002 Iowa Acts, House File 2584.

701—71.2(421,428,441) Assessment and valuation of real estate.

71.2(1) *Responsibility of assessor.* The valuation of real estate as established by city and county assessors shall be the actual value of the real estate as of January 1 of the year in which the assessment is made. New parcels of real estate created by the division of existing parcels of real estate shall be assessed separately as of January 1 of the year following the division of the existing parcel of real estate.

71.2(2) *Responsibility of other assessing officials.* Whenever local boards of review, county auditors, and county treasurers exercise assessment functions allowed or required by law, they shall follow the provisions of subrule 71.2(1) and rules 71.3(421,428,441) to 71.7(421,427A,428,441).

This rule is intended to implement Iowa Code sections 421.17, 428.4 and 441.21.

701—71.3(421,428,441) Valuation of agricultural real estate. Agricultural real estate shall be assessed at its actual value as defined in Iowa Code section 441.21 by giving exclusive consideration to its productivity and net earning capacity. In determining the actual value of agricultural real estate, city and county assessors shall use the "Iowa Real Property Appraisal Manual" and any other guidelines issued by the department of revenue pursuant to Iowa Code section 421.17(18).

In determining the productivity and net earning capacity of agricultural real estate, the assessor shall also use available data from Iowa State University, the Iowa crop and livestock reporting service, the

department of revenue, or other reliable sources. The assessor shall also consider the results of a modern soil survey, if completed.

The assessor shall determine the actual valuation of agricultural real estate within the assessing jurisdiction and spread such valuation throughout the jurisdiction so that each parcel of real estate is assessed at its actual value as defined in Iowa Code section 441.21.

In order to determine a productivity value for agricultural buildings and structures, assessors shall make an agricultural adjustment to the market value of these buildings and structures by developing an "agricultural factor" for their jurisdiction. The agricultural factor for each jurisdiction shall be the product of the ratio of the productivity and net earning capacity value per acre as determined under subrule 71.12(1) over the market value of agricultural land within the assessing jurisdiction. The resulting ratio is then applied to the actual value of the agricultural buildings and structures as determined under the Iowa Real Property Appraisal Manual prepared by the department. The agricultural factor shall be applied uniformly to all agricultural buildings and structures in the assessing jurisdiction. As an example, if a building's actual value is $500,000 and the agricultural factor is 50 percent, the productivity value of that building is $250,000. See *H & R Partnership v. Davis County Board of Review,* 654 N.W.2d 521 (Iowa 2002).

Land classified as agricultural real estate includes the land beneath any dwelling and appurtenant structures located on that land and shall be valued by the assessor pursuant to rule 701—71.3(421,428,441). An assessor shall not value a part of the land as agricultural real estate and a part of the land as if it is residential real estate.

This rule is intended to implement Iowa Code sections 421.17, 428.4 and 441.21.

701—71.4(421,428,441) Valuation of residential real estate. Residential real estate shall be assessed at its actual value as defined in Iowa Code section 441.21.

In determining the actual value of residential real estate, city and county assessors shall use the appraisal manual issued by the department of revenue pursuant to Iowa Code section 421.17(18) as well as a locally conducted assessment/sales ratio study, an analysis of sales of comparable properties, and any other relevant data available.

This rule is intended to implement Iowa Code sections 421.17, 428.4 and 441.21.

701—71.5(421,428,441) Valuation of commercial real estate. Commercial real estate shall be assessed at its actual value as defined in Iowa Code section 441.21. In determining the actual value of commercial real estate, city and county assessors shall use the appraisal manual issued by the department of revenue pursuant to Iowa Code section 421.17(18) as well as a locally conducted assessment/sales ratio study, an analysis of sales of comparable properties, and any other relevant data available.

71.5(1) *Property of long distance telephone companies.* The director of revenue shall assess the property of long distance telephone companies as defined in Iowa Code section 476.1D(10) which property is first assessed for taxation on or after January 1, 1996, in the same manner as commercial real estate.

71.5(2) *Low-income housing subject to Section 42 of the Internal Revenue Code.*

a. Productive and earning capacity. In assessing property that is rented or leased to low-income individuals and families as authorized by Section 42 of the Internal Revenue Code which limits the amount that the individual or family pays for the rental or lease of units in the property, the assessor shall use the productive and earning capacity from the actual rents received as a method of appraisal and shall take into account the extent to which that use and limitation reduces the market value of the property.

b. Direct capitalization method. The income approach to valuation shall be applied using the direct capitalization method. The assessor may use the discounted cash flow method as a test of the reasonableness of the results produced by the direct capitalization method. The direct capitalization method of the income approach involves dividing the Net Operating Income (NOI) on a cash basis by an overall capitalization rate to derive an indication of the value of the property for the assessment year.

In applying the direct capitalization method, the assessor shall develop a normalized measure of annual NOI based on the productive and earning capacity of the development utilizing (1) the actual rent

schedule applicable for each of the available units as of January 1 of the year of assessment indicating the actual rent to be paid by the resident plus any Section 8 rental assistance or other direct cash rental subsidy provided to the resident by federal, state or local rent subsidy programs as limited pursuant to Section 42 of the Internal Revenue Code, (2) a normal vacancy/collection allowance, (3) the prior year's actual and current year's projected annual operating expenses associated with the property, excluding noncash items such as depreciation and amortization, but including property taxes and those actual costs expected to be incurred and paid as required by Internal Revenue Code Section 42 regulations, provisions, and restrictions as applicable to the assessment year, and (4) an appropriate provision for replacement reserves.

If no separate line item is included for reserves for replacement in the historic income and expense data, then the maintenance and repair categories of the historic expense data must be itemized. For properties that have attained a normalized operating history, the NOI results of the prior three years (as represented in the statements variously named as the Income and Loss Statement, the Profit and Loss Statement, the Income Statement, the Actual to Budget Comparison Statement, Balance Sheet, or some name variation of these) may be used to provide the basis for determining the normalized NOI used for purposes of applying the direct capitalization method for the year of assessment, provided an appropriate replacement reserve is included in the NOI determination and provided any additional costs required as a result of Section 42 regulation or compliance changes for the assessment year are included as an operating expense in the NOI determination. In addition, the assessor may utilize the current year operating budget to develop a measure of NOI for the assessment year. The assessor, in developing the measure of annual NOI on a cash basis, shall not consider as income any potential rental income differential that could otherwise be received from the property if the rents were not limited pursuant to Section 42 of the Internal Revenue Code, any tax credit equity, any tax credit value, or other subsidized financing.

c. Filing of reports. It shall be the responsibility of the property owner to file income and expense data with the local assessor by March 1 of each year. The assessor may require the filing of additional information if deemed necessary.

d. Capitalization rate. The overall capitalization rate to be used in applying the direct capitalization method for a Section 42 property is developed through the band-of-investment technique. The capitalization rate will be calculated annually by the Iowa department of revenue and distributed to all Iowa assessors by March 1. The capitalization rate is a composite rate weighted by the proportions of total property investment represented by debt and equity. The capital structure weights equity at 80 percent and debt at 20 percent unless actual market capital structure can be verified to the assessor. The yield, or market rate of return, for equity is calculated using the capital asset pricing model (CAPM). The yield for debt is equivalent to the average yield on 25-year Treasury bonds referred to as the Treasury long-term average rate. An example of the band-of-investment technique to be utilized is as follows:

	% to Total	Yield	Composite
Equity	80%	11.05%	8.84%
Debt	20%	5.94%	1.19%
	100%		10.03%

e. Capital asset pricing model. The capital asset pricing model (CAPM) is utilized to develop the equity rate. The formula is:

$$Re = B (Rm - Rf) + Rf$$

Where: Re = return on equity

B = beta

Rm	=	return on the market
Rf	=	risk-free rate of return
Rm - Rf	=	market-risk premium

The beta is assumed to be 1 which indicates the risk level to be consistent with the market as a whole. The risk-free rate is calculated by finding the average of the three-month and six-month Treasury bill. The return on the market is calculated by taking the average of the return on the market for the Merrill Lynch Universe and Standard and Poor's 500 or by reference to other published secondary sources.

f. *Properties under construction.* For Section 42 properties under construction, the assessor may value the property by applying the percentage of completion to the replacement cost new (RCN) as calculated from the Iowa Real Property Appraisal Manual and adding the fair market value of the land. Alternatively, projected income and expense data may be utilized if available.

g. *Negative or minimal NOI.* If the Section 42 property shows a negative or minimal net operating income (NOI), the indicator of value as set forth in these rules shall not be utilized.

h. *Eligibility withdrawn.* The property owner shall notify the assessor when property is withdrawn from Section 42 eligibility under the Internal Revenue Code. The notification must be provided by March 1 of the assessment year or the owner is subject to a penalty of $500.

This rule is intended to implement Iowa Code sections 421.17, 428.4, 441.21 as amended by 2004 Iowa Acts, Senate File 2296, and 476.1D(10).

701—71.6(421,428,441) Valuation of industrial land and buildings. Industrial real estate shall be assessed at its actual value as defined in Iowa Code section 441.21.

In determining the actual value of industrial land and buildings, city and county assessors shall use the appraisal manual issued by the department of revenue pursuant to Iowa Code subsection 421.17(18), and any other relevant data available.

This rule is intended to implement Iowa Code sections 421.17, 428.4 and 441.21.

701—71.7(421,427A,428,441) Valuation of industrial machinery. Industrial machinery as referred to in Iowa Code section 427A.1(1)*"e"* shall include all machinery used in manufacturing establishments and shall be assessed as real estate even though such machinery might be assessed as personal property if not used in a manufacturing establishment.

In determining the actual value of industrial machinery assessed as real estate, the assessor shall give consideration to the "Industrial Machinery and Equipment Valuation Guide" issued by the department of revenue and any other relevant data available.

This rule is intended to implement Iowa Code sections 421.17, 427A.1, 428.4 and 441.21.

701—71.8(428,441) Abstract of assessment. Each city and county assessor shall submit annually to the director of revenue at the times specified in Iowa Code section 441.45 an abstract of assessment for the current year. The assessor shall use the form of abstract prescribed and furnished by the department of revenue, and shall enter on the abstract all information required by the department. However, the department may approve the use of a computer-prepared abstract if the data is essentially the same format as on the form prescribed by the department. The information entered on the abstract of assessment shall be reviewed and considered by the director of revenue in equalizing the valuations of classes of properties.

This rule is intended to implement Iowa Code sections 428.4 and 441.45.

701—71.9(428,441) Reconciliation report. The assessor's report of any revaluation required by Iowa Code section 428.4 shall be made on the reconciliation report prescribed and furnished by the department of revenue. The assessor shall enter on the report all information required by the department. The reconciliation report shall be a part of the abstract of assessment required by Iowa Code section 441.45 and shall be reviewed and considered by the director in equalizing valuations of classes of property.

This rule is intended to implement Iowa Code sections 428.4 and 441.45.

701—71.10(421) Assessment/sales ratio study.

71.10(1) *Basic data.* Basic data shall be that submitted to the department of revenue by county recorders and city and county assessors on forms prescribed and provided by the department, information furnished by parties to real estate transactions, and information obtained by field investigations made by the department of revenue.

71.10(2) *Responsibility of recorders and assessors.* County recorders and city and county assessors shall complete the prescribed forms as required by Iowa Code subsection 421.17(6) and rule 701—79.3(428A) in accordance with instructions issued by the department. Assessed values entered on the prescribed form shall be those established as of January 1 of the year in which the sale takes place.

71.10(3) *Normal sales.* All real estate transfers shall be considered by the department of revenue to be normal sales unless there exists definite information which would indicate the transfer was not an arms-length transaction or is of an excludable nature as provided in Iowa Code section 441.21.

This rule is intended to implement Iowa Code section 421.17.

701—71.11(441) Equalization of assessments by class of property. Commencing in 1977 and every two years thereafter, the director of revenue shall order the equalization of the levels of assessment of each class of property as provided in rule 71.12(441) by adding to or deducting from the valuation of each class of property, as reported to the department on the abstract of assessment and reconciliation report which is a part of the abstract, the percentage in each case as may be necessary to bring the level of assessment to its actual value as defined in Iowa Code section 441.21. Valuation adjustments shall be ordered if the director determines that the aggregate valuation of a class of property as reported on the abstract of assessment submitted by the assessor is at least 5 percent above or below the aggregate valuation for that class of property as determined by the director pursuant to rule 71.12(441). Equalization orders of the director shall be restricted to equalizing the aggregate valuations of entire classes of property among the several assessing jurisdictions. All classifications of real estate shall be applied uniformly throughout the state of Iowa.

Equalization percentage adjustments determined for residential realty located outside incorporated areas and not located on agricultural land shall apply to buildings located on agricultural land outside incorporated areas, which are primarily used or intended for human habitation, as defined in subrule 71.1(4).

Equalization percentage adjustments determined for residential realty located within incorporated cities and not located on agricultural land shall apply to buildings located on agricultural land within incorporated cities which are primarily used or intended for human habitation as defined in subrule 71.1(4).

This rule is intended to implement Iowa Code sections 441.21, 441.47, 441.48 and 441.49.

701—71.12(441) Determination of aggregate actual values.

71.12(1) *Agricultural real estate.*

a. *Use of income capitalization study.* The equalized valuation of agricultural realty shall be based upon its productivity and net earning capacity and shall be determined in accordance with the provisions of this subrule. Data used shall pertain to crops harvested during the five-year period ending with the calendar year in which assessments were last equalized. The equalized valuation of agricultural realty shall be determined for each county as follows:

(1) *Computation of county acres.* This information shall be obtained from "Iowa Agricultural Statistics" published by the Iowa Crop and Livestock Reporting Service.

Total acres in farms: Total acreage used for agricultural purposes.
Corn acres: Sum of corn acres harvested including silage, popcorn and acres planted for sorghum.
Oats and wheat acres: Sum of oats and wheat acres harvested.
Soybean acres: Soybean acres harvested.
Hay acres: All hay acres harvested.

Pasture acres: All pasture acres. Total pasture acres shall be determined by multiplying the total acres in farms reported in "Iowa Agricultural Statistics" by the percentage which total pasture land as reported in the most recent U.S. Census of Agriculture bears to the total acreage in farmland also as reported in the most recent U.S. Census of Agriculture. Determine the amount of tillable and nontillable pasture acres as follows:

1. From the most recent U.S. Census of Agriculture obtain the following:

Cropland used only for pasture and grazing	acres_____
Woodland pasture	acres_____
Pasture land and rangeland (other than cropland and woodland pasture)	acres_____
Total pasture land (total of above)	acres_____

2. Determine the percent that cropland used only for pasture is of the total pasture land _____ %

3. Apply this percentage to the 5-year average total acres of pasture as determined above to determine the pasture acres to be classified as tillable pasture. The remainder of the 5-year average shall be classified as nontillable pasture land.

Determine the 5-year average acres participating in applicable government programs. Obtain data from the U.S. Agricultural Stabilization and Conservation Service, including but not limited to acreage devoted to the Payment-In-Kind (PIK), diverted and deficiency programs.

"Other acres": The difference between the total acreage for land uses listed above and the total of all land in farms. Add the total of the corn, oats, soybeans, hay, tillable and nontillable pasture and diverted acres. Subtract this total from total acres in farms. The residual is classified as other acres.

(2) *Computation of county yields.* This information shall be obtained for each county from "Iowa Agricultural Statistics" published by the Iowa crop and livestock reporting service.

Corn yield (including silage, sorghum and popcorn): Number of bushels of corn harvested for grain per acre.

Oat yield (including wheat): Number of bushels of oats harvested per acre.

Soybean yield: Number of bushels per acre harvested.

Hay yield in tons: Number of tons per acre harvested as reported by the Iowa crop and livestock reporting service.

(3) *Computation of county gross income.*

Corn: One-half of the 5-year average production multiplied by the 5-year average price received for corn.

Silage, popcorn, and sorghums: One-half of the 5-year average number of acres devoted to the production of silage, popcorn, and sorghum, times the 5-year average production per acre for corn. The amount of production so determined shall be added to the 5-year average production for corn and included in the determination of the gross income for corn.

Soybeans: One-half of the 5-year average production multiplied by the 5-year average price received.

Oats: One-half of the 5-year average production of oats and wheat multiplied by the 5-year average price received.

Price adjustment: For corn, soybeans, and oats, the prices used shall be as provided by the Iowa crop and livestock reporting service and shall be adjusted to reflect any individual county price conditions.

Government programs: Gross income shall be one-half of the 5-year average amount of cash payments or equivalent (such as PIK bushels) including but not limited to diverted, deficiency and PIK programs as reported by the U.S. Agricultural Stabilization and Conservation Service.

Hay: Gross income shall be a cash rent amount determined by multiplying the 5-year average number of acres devoted to hay by the product obtained by multiplying one-fourth of the 5-year average hay yield by the 5-year average price received for hay.

Tillable pasture: Gross income shall be a cash rent amount determined by multiplying the 5-year average number of acres devoted to tillable pasture by the product obtained in "hay" above.

Nontillable pasture: Gross income shall be a cash rent amount determined by multiplying the 5-year average number of acres devoted to nontillable pasture by one-half the product obtained in "hay" above.

Other acres: Income shall be the product of the number of other acres times 17 percent of the net income per acre for all other land uses.

(4) *Computation of county production costs.* The following data and procedures shall be used to determine specific county production costs.

Basic average landlord production costs: Landlord production costs for corn, soybeans, oats, diverted acres, hay, tillable pasture, nontillable pasture, fertilizer costs, and facilities costs shall be obtained for each year from Iowa State University.

Production cost adjustment. The production costs for corn, soybeans, oats, and hay are adjusted for each county by multiplying the difference between the 5-year state average yield per acre and the 5-year county average yield per acre by the 5-year average facilities costs. If a county's yield exceeds the state yield, production costs are increased by this amount. If a county's yield is less than the state yield, production costs are reduced by this amount.

Fertilizer cost adjustment. The adjustment for fertilizer costs is determined as follows: Multiply the difference between the 5-year state average corn yield per acre and the 5-year county average corn yield per acre by the fertilizer cost amount per bushel determined by Iowa State University. This amount is then multiplied times the 5-year county average corn acres determined above.

If a county's 5-year average corn yield is greater than the state 5-year average corn yield, this amount is allowed as an additional expense. If less than the state average, this amount is an expense reduction.

Liability insurance cost adjustment.

The 5-year average per acre cost of obtaining tort liability insurance shall be determined.

(5) *Computation of county net income.* From the total gross income, subtract the total expenses. Divide the resulting total by the total number of acres.

(6) *Computation of dwelling adjustment factor.* The amount determined in (5) above shall be reduced by 10.6 percent.

(7) *Computation of county tax adjustment.* Subtract the 5-year average per acre real estate taxes levied for land and structures including drainage and levee district taxes but excluding those levied against agricultural dwellings. Taxes shall be the tax levied for collection during the 5-year period as reported by county auditors, and reduced by the amount of the agricultural land tax credit.

(8) *Calculate county valuation per acre.* Divide the net income per acre ((7) above) for each county as determined above by the capitalization rate specified in Iowa Code section 441.21. The quotient shall be the actual per acre equalized valuation of agricultural land and structures for the current equalization year.

b. *Use of other relevant data.* The director may also consider other relevant data, including field investigations conducted by representatives of the department of revenue to determine the level of assessment of agricultural real estate.

c. *Determination of value.* The aggregate actual value of agricultural real estate in each county shall be determined by multiplying the equalized per acre value by the number of acres of agricultural real estate reported on the abstract of assessment for the current year, adjusted where necessary by the results of any field investigations conducted by the department of revenue and any other relevant data available.

71.12(2) *Residential real estate outside and within incorporated cities.*

a. Use of assessment/sales ratio study. Basic data shall be that set forth in rule 71.10(421) refined by eliminating any sales determined to be abnormal or by adjusting the sales to eliminate the effects of factors which resulted in the sales having been determined to be abnormal. The basic data used shall be the assessment/sales ratio study conducted for sales taking place during the calendar year immediately preceding the year in which the equalization order is issued. The director may also supplement the assessment/sales ratio study with appraisals made by department of revenue appraisal personnel for the year immediately preceding the year in which the equalization order is issued. The assessment/sales ratio study including relevant appraisals, if any, shall be used to determine the aggregate actual valuation of residential real estate in each assessing jurisdiction. The director of revenue may consider sales and appraisal data for prior years if it is determined the use of the sales and appraisal data for the year immediately preceding the year in which the equalization order is issued is insufficient to determine market value. If such sales and appraisal data for prior years is used, consideration shall be given for any subsequent changes in either assessed value or market value.

Assessors shall provide any known facts or circumstances regarding reported sales transactions and department appraisals which would indicate abnormal or unusual conditions or reporting discrepancies which would necessitate exclusion or adjustment of sales or appraisals from the determination of aggregate actual values. Assessors shall provide those facts within 45 days of receipt from the department of information concerning sales and appraisal data proposed for assessment/sales ratio and equalization purposes.

b. Use of other relevant data. The director may also consider other relevant data, including field investigations conducted by representatives of the department of revenue to determine the level of assessment of residential real estate.

c. Equalization appraisal selection procedures for residential real estate. Residential properties to be appraised by department of revenue personnel for use in supplementing the assessment/sales ratio study shall be selected for each jurisdiction in the following manner:

(1) The department appraiser assigned to the jurisdiction shall determine a systematic random sequence of numbers equal to the number of appraisals required and document the following steps.

1. The department appraiser assigned to the jurisdiction shall compute the interval number by dividing the total number of improved properties in the classification to be sampled by the number of appraisals to be performed.

EXAMPLE: In this example, ten appraisals are needed with a total of 1,397 improved residential units. Dividing 1,397 by 10, 139.7 is arrived at, which is rounded down to 139. This is the interval number.

2. The selection of the first sequence number shall be accomplished by having an available disinterested person randomly select a number from one through the interval number.

EXAMPLE: In this example a number from 1 to 139 is to be selected. The person randomly selected number 20.

3. The department appraiser shall develop a systematic sequence of numbers equal to the number of appraisals required. Starting with the randomly selected number previously picked by the disinterested person, add the interval number to this number and to each resulting number until a systematic sequence of numbers is obtained.

EXAMPLE: In this example ten appraisals are needed, so a sequence of ten numbers must be developed. Starting with number 20 and adding the interval number of 139 to it, each resulting number provides the following systematic sequence: 20, 159, 298, 437, 576, 715, 854, 993, 1,132, 1,271.

(2) Number of improved properties.

County jurisdictions—Put the name of each city or township having improved units in the classification to be sampled into a hat. Draw each one out of the hat and record its name in the order of its draw. Likewise, record the respective number of improved units for each. Then consecutively number all the improved units and document the procedure.

EXAMPLE:

City or Township	Number of Improved Residential Units	Code Numbers
Franklin Twp.	57	1-57
Pleasant View	160	58-217
Jackson Twp.	56	218-273
Johnston	300	274-573
Polk Twp.	110	574-683
Washington Twp.	114	684-797
Maryville	306	798-1103
Camden Twp.	110	1104-1213
Salem	184	1214-1397
Total	1,397	

(3) Determine the location of the improved properties selected for appraisal and document the procedure.

EXAMPLE:

City or Township	Number of Improved Residential Units	Code Numbers	Sequence Number	Entry on Rolls
Franklin Twp.	57	1-57	20	20
Pleasant View	160	58-217	159	102
Jackson Twp.	56	218-273		
Johnston	300	274-573	298,437	25,164
Polk Twp.	110	574-683	576	3
Washington Twp.	114	684-797	715	32
Maryville	306	798-1103	854,993	57,196
Camden Twp.	110	1104-1213	1132	29
Salem	184	1214-1397	1271	58
Total	1,397			

1. The department appraiser shall locate the property to be appraised by finding the relationship between the sequence numbers and the code numbers and identify the property.

EXAMPLE: The first sequence number is 20. Since the improved residential properties in Franklin Township have been assigned code numbers 1 to 57, sequence number 20 is in that location.

To identify this property, examine the Franklin Township assessment roll book and stop at the twentieth improved residential entry.

Document the parcel number, owner's name, and legal description of this property.

2. The department appraiser shall appraise the property selected unless it is ineligible because of any of the following restrictions:

Vacant building
Current year sale
Partial assessment
Prior equalization appraisal
Tax-exempt
Only one portion of a total property unit (example—a parking lot of a grocery store)
Value established by court action
Value is not more than $5,000
Building on leased land

3. The department appraiser shall determine a substitute property if the originally selected one is ineligible. In ascending order, select code numbers until an eligible property is found.

EXAMPLE: If code number 20 is ineligible, use code number 21 as a substitute. If code number 21 is ineligible, use code number 22, etc., until an eligible property is found.

If the procedure described in 71.12(2)*"c"*(3)"3" moves the substitute property to another city or township, select substitute code numbers in descending order until an eligible property is found.

If the procedure described in the previous paragraph moves the substitute property to a preceding city or township, go back to the procedure of 71.12(2)*"c"*(3)"3" even if it moves the substitute property to a subsequent city or township.

4. Select an alternate property for the originally selected property which also would be eligible. This is necessary because at the time of appraisal the property may be found to be ineligible due to one of the restrictions in 71.12(2)*"c"*(3)"2." Alternate properties are selected by using the same procedure described in 71.12(2)*"c"*(3)"3."

5. Follow procedures 71.12(2)*"c"*(3), items "1" to "4," for each of the other originally selected sequence numbers.

71.12(3) *Commercial real estate.*

a. Use of assessment/sales ratio study. Basic data shall be that set forth in rule 71.10(421), refined by eliminating any sales determined to be abnormal or by adjusting same to eliminate the effects of factors which resulted in the sales having been determined to be abnormal. The basic data used shall be the assessment/sales ratio study conducted for sales taking place during the calendar year immediately preceding the year in which the equalization order is issued. The director may also supplement the assessment/sales ratio study with appraisals made by department of revenue appraisal personnel for the year immediately preceding the year in which the equalization order is issued. The assessment/sales ratio study including relevant appraisals, if any, shall be used to determine the aggregate actual valuation of commercial real estate in each assessing jurisdiction. The director of revenue may consider sales and appraisal data for prior years if it is determined the use of sales and appraisal data for the year immediately preceding the year in which the equalization order is issued is insufficient to determine market value. If such sales and appraisal data for prior years is used, consideration shall be given for any subsequent changes in either assessed value or market value.

b. Use of other relevant data. The director may also consider other relevant data, including field investigations conducted by representatives of the department of revenue to determine the level of assessment of commercial real estate. The diverse nature of commercial real estate precludes the use of a countywide or citywide income capitalization study.

Assessors shall provide any known facts or circumstances regarding reported sales transactions and department appraisals which would indicate abnormal or unusual conditions or reporting discrepancies which would necessitate exclusion or adjustment of sales or appraisals from the determination of aggregate actual values. Assessors shall provide those facts within 45 days of receipt from the department of information concerning sales and appraisal data proposed for assessment/sales ratio and equalization purposes.

c. Equalization appraisal selection procedures for commercial real estate. Commercial properties to be appraised by department of revenue personnel for use in supplementing the assessment/sales ratio study shall be selected for each jurisdiction in the following manner:

(1) The department appraiser assigned to the jurisdiction shall determine a systematic random sequence of numbers equal to the number of appraisals required and document the following steps.

1. The department appraiser shall compute the interval number by dividing the total number of improved properties in the classification to be sampled by the number of appraisals to be performed.

EXAMPLE: In this example, ten appraisals are needed with a total of 397 improved commercial units. Dividing 397 by 10, 39.7 is arrived at, which is rounded down to 39. This is the interval number.

2. The selection of the first sequence number shall be accomplished by having an available disinterested person randomly select a number from one through the interval number.

EXAMPLE: In this example a number from 1 to 39 is to be selected. The person randomly selected number 2.

3. The department appraiser shall develop a systematic sequence of numbers equal to the number of appraisals required. Starting with the randomly selected number previously picked by the disinterested person, add the interval number to this number and to each resulting number until a systematic sequence of numbers is obtained.

EXAMPLE: In this example ten appraisals are needed, so a sequence of ten numbers must be developed. Starting with number 2 and adding the interval number of 39 to it, each resulting number provides the following systematic sequence: 2, 41, 80, 119, 158, 197, 236, 275, 314, 353.

(2) Number of improved properties.

1. City jurisdictions—Utilizing the assessment book or a computer printout which follows the same order as the assessment book, consecutively number all the improved units and document the procedure.

2. County jurisdictions—Put the name of each city or township having improved units in the classification to be sampled into a hat. Draw each one out of the hat and record its name in the order of its draw. Likewise, record the respective number of improved units for each. Then consecutively number all the improved units and document the procedure.

EXAMPLE:

City or Township	Number of Improved Commercial Units	Code Numbers
Franklin Twp.	4	1-4
Pleasant View	60	5-64
Jackson Twp.	9	65-73
Johnston	100	74-173
Polk Twp.	10	174-183
Washington Twp.	14	184-197
Maryville	106	198-303
Camden Twp.	10	304-313
Salem	84	314-397
Total	397	

(3) The department appraiser shall determine the location of the improved properties selected for appraisal and document the procedure.

EXAMPLE:

City or Township	Number of Improved Commercial Units	Code Numbers	Sequence Number	Entry on Rolls
Franklin Twp.	4	1-4	2	2
Pleasant View	60	5-64	41	37
Jackson Twp.	9	65-73		
Johnston	100	74-173	80,119,158	7,46,85
Polk Twp.	10	174-183		
Washington Twp.	14	184-197	197	14
Maryville	106	198-303	236,275	39,78
Camden Twp.	10	304-313		
Salem	84	314-397	314,353	1,40
Total	397			

1. The department appraiser shall locate the property to be appraised by finding the relationship between the sequence numbers and the code numbers and identify the property.

EXAMPLE: The first sequence number is 2. Since the improved commercial properties in Franklin Township have been assigned code numbers 1 to 4, sequence number 2 is in that location.

To identify this property, examine the Franklin Township assessment roll book and stop at the second improved commercial entry.

The department appraiser shall document the parcel number, owner's name, and legal description of this property.

2. The department appraiser shall appraise the property selected unless it is ineligible because of any of the following restrictions:

Vacant building

Current year sale

Partial assessment

Prior equalization appraisal

Tax-exempt

Only one portion of a total property unit (example—a parking lot of a grocery store)

Value established by court action

Value is not more than $5,000

Building on leased land

3. The department appraiser shall determine a substitute property if the originally selected one is ineligible. In ascending order, select code numbers until an eligible property is found.

EXAMPLE: If code number 2 is ineligible, use code number 3 as a substitute. If code number 3 is ineligible, use code number 4, etc., until an eligible property is found.

If the procedure described in 71.12(3)*"c"*(3)"3" moves the substitute property to a city or township, select substitute code numbers in descending order until an eligible property is found.

If the procedure described in the previous paragraph moves the substitute property to a preceding city or township, go back to the procedure of 71.12(3)*"c"*(3)"3" even if it moves the substitute property to a subsequent city or township.

4. Select an alternate property for the originally selected property which also would be eligible. This is necessary because at the time of appraisal the property may be found to be ineligible due to one of the restrictions in 71.12(3)*"c"*(3)"2." Alternate properties are selected by using the same procedure described in 71.12(3)*"c"*(3)"3."

5. Follow procedures 71.12(3)*"c"*(3), items "1" to "4," for each of the other originally selected sequence numbers.

71.12(4) *Industrial real* estate. It is not possible to determine the level of assessment of industrial real estate by using accepted equalization methods. The lack of sales data precludes the use of an assessment/sales ratio study, the diverse nature of industrial real estate precludes the use of a countywide or citywide income capitalization study, and the limited number of industrial properties precludes the use of sample appraisals. The level of assessment of industrial real estate can only be determined by the valuation of individual parcels of industrial real estate. Any attempt to equalize industrial valuations by using accepted equalization methods would create an arbitrary result. However, under the circumstances set forth in Iowa Code subsection 421.17(10), the director may correct any errors in such assessments which are brought to the director's attention.

71.12(5) *Personal property.* Rescinded IAB 10/25/95, effective 11/29/95.

71.12(6) *Centrally assessed property.* Property assessed by the director of revenue pursuant to Iowa Code chapters 428 and 433 to 438, inclusive, is equalized internally by the director in the making of the assessments. Further, the assessments are equalized with the aggregate valuations of other classes of property as a result of actions taken by the director of revenue pursuant to rule 71.11(441).

71.12(7) *Miscellaneous real estate.* Since it is not possible to use accepted equalization methods to determine the level of assessment of mineral rights and interstate railroad and toll bridges, these classes of property shall not be subject to equalization by the director of revenue. However, under the circumstances

set forth in Iowa Code section 421.17(10), the director may correct any errors in assessments which are brought to the director's attention.

This rule is intended to implement Iowa Code sections 441.21, 441.47, 441.48 and 441.49.

701—71.13(441) Tentative equalization notices. Prior to the issuance of the final equalization order to each county auditor, a tentative equalization notice providing for proposed percentage adjustments to the aggregate valuations of classes of property as set forth in rule 701—71.12(441) shall be mailed to the county auditor whose valuations are proposed to be adjusted. The tentative equalization notice constitutes the ten days' notice required by Iowa Code section 441.48.

This rule is intended to implement Iowa Code sections 441.47 and 441.48.

701—71.14(441) Hearings before the director.

71.14(1) *Protests.* Written or oral protest against the proposed percentage adjustments as set forth in the tentative equalization notice issued by the director of revenue shall be made only on behalf of the affected assessing jurisdiction. The protests shall be made only by officials of the assessing jurisdiction, including, but not limited to, an assessing jurisdiction's city council or board of supervisors, assessor, or city or county attorney. An assessing jurisdiction may submit a written protest in lieu of making an oral presentation before the director, or may submit an oral protest supported by written documentation. Protests against the adjustments in valuation contained in the tentative equalization notices shall be limited to a statement of the error or errors complained of and shall include such facts as might lead to their correction. No other factors shall be considered by the director in reviewing the protests. Protests and hearings on tentative equalization notices before the director are excluded from the provisions of the Iowa Administrative Procedure Act governing contested case proceedings.

71.14(2) *Conduct of hearing.* The director shall schedule each hearing so as to allow the same amount of time within which each assessing jurisdiction can make its presentation. During the hearing each assessing jurisdiction shall be afforded the opportunity to present evidence relevant to its protest. The director or the director's designated representative shall preside at the hearing which shall be held at the time and place designated by the director or such other time and place as may be mutually agreed upon by the director and the protesting assessing jurisdiction.

This rule is intended to implement Iowa Code section 441.48.

701—71.15(441) Final equalization order. After the tentative equalization notice has been issued and an opportunity for a hearing described in rule 71.14(441) has been afforded, the director shall issue a final equalization order by mail to the county auditor. The order shall specify any percentage adjustments in the aggregate valuations of any class of property to be made effective for the county as of January 1 of the year in which the order is issued. The final equalization order shall be issued on or before October 1 unless for good cause it cannot be issued until after October 1. The final equalization order shall be implemented by the county auditor.

An assessing jurisdiction may appeal a final equalization order to the state board of tax review. The protest must be filed or postmarked not later than ten days after the date the final equalization order is issued.

This rule is intended to implement Iowa Code sections 441.48 and 441.49.

701—71.16(441) Alternative method of implementing equalization orders.

71.16(1) *Application for permission to use an alternative method.* A request by an assessing jurisdiction for permission to use an alternative method of applying the final equalization order must be made in writing to the director of revenue within ten days from the date the county auditor receives the final equalization order. The written request shall include the following information:

a. Facts evidencing the need to use an alternative method of implementing the final equalization order. Such facts shall clearly show that the proposed method is essential to ensure compliance with the provisions of Iowa Code section 441.21.

b. The exact methods to be employed in implementing the requested alternative method for each class of property.

c. The specific method of notifying affected property owners of the valuation changes.

d. Evidence that the alternative method will result in an aggregate property class valuation adjustment equivalent to that prescribed in the director's final equalization order.

The director of revenue shall review each written request for an alternative method and shall notify the assessing jurisdiction of acceptance or rejection of the proposed method by October 15. The assessing jurisdiction shall immediately inform the county auditor of the director's decision. The county auditor shall include a description of any approved alternative method in the required newspaper publication of the final equalization order. In those instances where the approved alternative method includes individual property owner notification, the publication shall not be considered proper notice to the affected property owners.

71.16(2) *Implementation of alternative method.* If an alternative method is approved by the director of revenue, any individual notification of property owners shall be completed by the assessor by not later than October 25.

71.16(3) *Appeal by property owners.* If an alternative method is approved by the director of revenue, the special session of the local board of review to hear equalization protests shall be extended to November 30. In such instances, protests may be filed up to and including November 4.

This rule is intended to implement Iowa Code section 441.49.

701—71.17(441) Special session of boards of review.

71.17(1) *Grounds for protest.* The only ground for protesting to the local board of review reconvened in special session pursuant to Iowa Code section 441.49 is that the application of the director's final equalization order results in a value greater than that permitted under Iowa Code section 441.21.

71.17(2) *Authority of board of review.* When in special session to hear protests resulting from equalization adjustments, the local board of review shall only act upon protests for those properties for which valuations have been increased as a result of the application of the director of revenue's final equalization order.

The local board of review may adjust valuations of those properties it deems warranted, but under no circumstance shall the adjustment result in a value less than that which existed prior to the application of the director's equalization order. The local board of review shall not adjust the valuation of properties for which no protests have been filed.

71.17(3) *Report of board of review.* In the report to the director of revenue of action taken by the local board of review in special session, the board of review shall report the aggregate valuation adjustments by class of property as well as all other information required by the director of revenue to determine if such actions may have substantially altered the equalization order.

71.17(4) *Meetings of board of review.* If the final equalization order does not increase the valuation of any class of property, the board of review is not required to meet during the special session. If the final equalization order increases the valuation of one or more classes of property but no protests are filed by the times specified in Iowa Code section 441.49, the board of review is not required to meet during the special session.

This rule is intended to implement Iowa Code sections 421.17(10) and 441.49.

701—71.18(441) Judgment of assessors and local boards of review. Nothing stated in these rules should be construed as prohibiting the exercise of honest judgment, as provided by law, by the assessors and local boards of review in matters pertaining to valuing and assessing of individual properties within their respective jurisdictions.

This rule is intended to implement Iowa Code sections 441.17 and 441.35.

701—71.19(441) Conference boards.

71.19(1) *Establishment and abolition of office.*

a. As referred to in Iowa Code section 441.1, the term "federal census" includes any special census conducted by the Bureau of the Census of the U.S. Department of Commerce as well as the Bureau's decennial census.

b. Within 60 days of receiving the certified results of a federal census indicating the population of a city having its own assessor has fallen below 10,000, the city council of the city shall repeal the ordinance providing for its own assessor.

c. Whenever the office of city assessor is abolished, all moneys in the assessment expense fund and the special appraiser fund shall be transferred to the appropriate accounts in the county assessor's office, and all equipment and supplies shall be transferred to the county assessor's office. Employees of the city assessor's office may, at the discretion of the county assessor, become employees of the county assessor. However, any deputy assessor of the city may not be appointed a deputy county assessor unless certified as eligible for appointment pursuant to Iowa Code sections 441.5 and 441.10.

71.19(2) *Membership.*

a. *County conference boards.* A county conference board consists of the county board of supervisors, the mayor of each incorporated city in the county whose property is assessed by the county assessor, and one member of the board of directors of each high school district in the county, provided the member is a resident of the county. Members representing school districts serve one-year terms, and the board of directors each year must notify the clerk of the conference board of its representative on the conference board. A member of the board of directors of a school district may serve on the county conference board even though the member lives in a city having its own assessor (1978 O.A.G. 466).

b. *City conference boards.* A city conference board consists of the county board of supervisors, the city council, and the entire board of directors of each school district whose property is assessed by the city assessor.

71.19(3) *Voting.*

a. Votes on matters before a conference board shall be by units as provided in Iowa Code section 441.2. At least two members of each voting unit must be present in order for the unit to cast a vote (1960 O.A.G. 226). In the event the vote of the members of a voting unit ends in a tie, that unit shall not cast a vote on the particular matter before the conference board.

b. If a member of a conference board is absent from a meeting, the member's vote may not be cast by another person, except that a mayor pro tem as provided in Iowa Code section 372.14(3) may vote for the mayor when the mayor is absent from or unable to perform official duties.

This rule is intended to implement Iowa Code section 441.2.

701—71.20(441) Board of review.

71.20(1) *Membership.*

a. *Occupation of members.* One member of the county board of review must be actively engaged in farming as that member's primary occupation. However, it is not necessary for a board of review to have as a member one licensed real estate broker and one registered architect or person experienced in the building and construction field if the person cannot be located after a good faith effort to do so has been made by the conference board (1966 O.A.G. 416). In determining eligibility for membership on a board of review, a retired person is not considered to be employed in the occupation pursued prior to retirement, unless that person remains in reasonable contact with the former occupation, including some participation in matters associated with that occupation.

b. *Residency of members.* A person must be a resident of the assessor jurisdiction served to qualify for appointment as a member of the board of review. However, a member changing assessing jurisdiction residency after appointment to the board may continue to serve on the board until the member's current term of office expires.

c. *Term of office.* The term of office of members of boards of review shall be for six years and shall be staggered as provided in Iowa Code section 441.31. In the event of the death, resignation, or

removal from office of a member of a board of review, the conference board or city council shall appoint a successor to serve the unexpired term of the previous incumbent.

d. Membership on other boards. A member of a board of review shall not at the same time serve on either the conference board or the examining board, or be an employee of the assessor's office (1948 O.A.G. 120, 1960 O.A.G. 226).

e. Number of members. A conference board or city council may at any time change the composition of a board of review to either three or five members. To reduce membership from five members to three members, the conference board or city council shall not appoint successors to fill the next two vacancies which occur (1970 O.A.G. 342). To increase membership from three members to five members, the conference board or city council shall appoint two additional members whose initial terms shall expire at such times so that no two board members' terms expire at the end of the same year. Also, the conference board or city council may increase the membership of the board of review by an additional two members if it determines that a large number of protests warrant the emergency appointments. If the board of review has ten members, not more than four additional members may be appointed by the conference board. The terms of the emergency members will not exceed two years.

f. Removal from office. A member of a board of review may be removed from office by the conference board or city council but only after specific charges have been filed by the conference board or city council.

g. Appointment of members. Members of a county board of review shall be appointed by the county conference board. Members of a city board of review shall be appointed by the city conference board in cities with an assessor or by the city council in cities without an assessor. A city without an assessor can only have a board of review if the population of the city is 75,000 or more. A city with a population of more than 125,000 may appoint a city board of review or request the county conference board to appoint a ten-member county board of review.

71.20(2) *Sessions of boards of review.*

a. It is mandatory that a board of review convene on May 1 and adjourn no later than May 31 of each year. However, if either date falls on a Saturday, Sunday, or legal holiday, the board of review shall convene or adjourn on the following Monday.

b. Extended session. If a board of review determines it will be unable to complete its work by May 31, it may request that the director of revenue extend its session up to July 15. The request must be signed by a majority of the membership of the board of review and must contain the reasons the board of review cannot complete its work by May 31. During the extended session, a board of review may perform the same functions as during its regular session unless specifically limited by the director of revenue.

c. Special session. If a board of review is reconvened by the director of revenue pursuant to Iowa Code section 421.17, the board of review shall perform those functions specified in the order of the director of revenue and shall perform no other functions.

71.20(3) *Actions initiated by boards of review.*

a. Internal equalization of assessments. A board of review in reassessment years as provided in Iowa Code section 428.4 has the power to equalize individual assessments as established by the assessor, but cannot make percentage adjustments in the aggregate valuations of classes of property (1966 O.A.G. 416). In nonreassessment years, a board of review can adjust the valuation of an entire class of property by adjusting all assessment by a uniform percentage. Nothing contained in this rule shall restrict the director from exercising the responsibilities set forth in Iowa Code section 421.17.

b. Omitted assessments. A board of review may assess for taxation any property which was not assessed by the assessor, including property which the assessor determines erroneously is not subject to taxation by virtue of enjoying an exempt status (*Talley v. Brown,* 146 Iowa 360,125 N.W. 248 (1910)).

c. Notice to taxpayers. If the value of any property is increased by a board of review or a board of review assesses property not previously assessed by the assessor, the person to whom the property is assessed shall be notified by regular mail of the board's action. The notification shall state that the taxpayer may protest the action by filing a written protest with the board of review within five days of the date of the notice. After at least five days have passed since notifying the taxpayer, the board of review

shall meet to take final action on the matter, including the consideration of any protest filed. However, if the valuations of all properties within a class of property are raised or lowered by a uniform percentage in a nonreassessment year, notice to taxpayers need be provided only by newspaper publication as described in Iowa Code section 441.35.

71.20(4) *Appeals to boards of review.*

a. A board of review may act only upon written protests which have been filed with the board of review between April 16 and May 5, inclusive. In the event May 5 falls on a Saturday or Sunday, protests filed the following Monday shall be considered to have been timely filed. Protests postmarked by May 5 or the following Monday if May 5 falls on a Saturday or Sunday shall also be considered to have been timely filed. All protests must be in writing and signed by the taxpayer or the taxpayer's authorized agent. A written request for an oral hearing must be made at the time of filing the protest and may be made by checking the appropriate box on the form prescribed by the department of revenue. Protests may be filed for previous years if the taxpayer discovers that a mathematical or clerical error was made in the assessment, provided the taxes have not been fully paid or otherwise legally discharged. The protester may combine on one form assessment protests on parcels separately assessed if the same grounds are relied upon as the basis for protesting each separate assessment. If an oral hearing is requested on more than one of the protests, the person making the combined protests may request that the oral hearings be held consecutively. A board of review may allow protests to be filed in electronic format. Protests transmitted electronically are subject to the same deadlines as written protests.

b. Grounds for protest. Taxpayers may protest to a board of review on one or more of the grounds specified in Iowa Code section 441.37. The grounds for protest and procedures for considering protests are as follows:

(1) The assessment is not equitable when compared with those of similar properties in the same assessing district. If this ground is a basis for the protest, the protest must contain the legal descriptions and assessments of the comparable properties. The comparable properties selected by the taxpayer must be located within the same assessing district as the property for which the protest has been filed (*Maytag Co. v. Partridge,* 210 N.W.2d 584 (Iowa 1973)). In considering a protest based upon this ground, the board of review should examine carefully all information used to determine the assessment of the subject property and the comparable properties and determine that those properties are indeed comparable to the subject property. It is the responsibility of the taxpayer to establish that the other properties submitted are comparable to the subject property and that inequalities exist in the assessments (*Chicago & N. W. Ry. Co. v. Iowa State Tax Commission,* 257 Iowa 1359,137 N.W.2d 246(1965)).

(2) The property is assessed at more than its actual value as defined in Iowa Code section 441.21. If this ground is used, the taxpayer must state both the amount by which the property is overassessed and the amount considered to be the actual value of the property.

(3) The property is not assessable and should be exempt from taxation. If using this ground, taxpayers must state the reasons why it is felt the property is not assessable.

(4) There is an error in the assessment. An error in the assessment would most probably involve erroneous mathematical computations or errors in listing the property. The improper classification of property also constitutes an error in the assessment. If this ground is used, the taxpayer's protest must state the specific error alleged.

A board of review must determine:

1. If an error exists, and
2. How the error might be corrected.

(5) There is fraud in the assessment. If this ground of protest is used, the taxpayer's protest must state the specific fraud alleged, and the board of review must first determine if there is validity to the taxpayer's allegation. If it is determined there is fraud in the assessment, the board of review shall take action to correct the assessment and report the matter to the director of revenue.

(6) There has been a change of value of real estate since the last assessment. The board of review must determine that the value of the property as of January 1 of the current year has changed since January 1 of the previous reassessment year. This is the only ground upon which a protest pertaining to the valuation of a property can be filed in a year in which the assessor has not assessed or reassessed the

property pursuant to Iowa Code section 428.4. In a year subsequent to a year in which a property has been assessed or reassessed pursuant to Iowa Code section 428.4, a taxpayer cannot protest to the board of review based upon actions taken in the year in which the property was assessed or reassessed (*James Black Dry Goods Co. v. Board of Review for City of Waterloo,* 260 Iowa 1269,151 N.W.2d 534 (1967); *Commercial Merchants Nat'l Bank and Trust Co. v. Board of Review of Sioux City,* 229 Iowa 1081, 296 N.W. 203 (1941)).

c. Disposition of protests. After reaching a decision on a protest, the board of review shall give the taxpayer written notice of its decision. The notice shall contain the following information:

(1) The valuation and classification of the property as determined by the board of review.

(2) If the protest was based on the ground the property was not assessable, the notice shall state whether the exemption is allowed and the value at which the property would be assessed in the absence of the exemption.

(3) The specific reasons for the board's decision with respect to the protest.

(4) That the board of review's decision may be appealed to the district court within 20 days of the board's adjournment or May 31, whichever date is later. If the adjournment date is known, the date shall be stated on the notice. If the adjournment date is not known, the notice shall state the date will be no earlier than May 31. Notice of the appeal shall be served on the chairperson, presiding officer, or clerk of the board of review after the written notice of appeal has been filed with the clerk of district court.

This rule is intended to implement Iowa Code sections 441.31 to 441.37 and Iowa Code Supplement section 441.38 as amended by 2006 Iowa Acts, House File 2794.

701—71.21(421,17A) Property assessment appeal board.

71.21(1) *Establishment, membership, and location of the property assessment appeal board.*

a. A statewide property assessment appeal board is created for the purpose of establishing a consistent, fair, and equitable property assessment appeal process. The statewide property assessment appeal board is established within the department of revenue. The board's principal office shall be in the office of the department of revenue.

b. The property assessment appeal board shall consist of three members appointed by the governor and subject to confirmation by the senate. The members shall be appointed to staggered six-year terms beginning initially on January 1, 2007, and ending as provided in Iowa Code section 69.19. Members' subsequent terms shall begin and end as provided in Iowa Code section 69.19. The governor shall appoint from the members a chairperson, subject to confirmation by the senate, of the board to a two-year term. Vacancies on the board shall be filled for the unexpired portion of the term in the same manner as regular appointments are made.

Each member of the property assessment appeal board shall be qualified by virtue of at least two years' experience in the area of government, corporate, or private practice relating to property appraisal and property tax administration. One member of the board shall be a certified real estate appraiser or hold a professional appraisal designation, one member shall be an attorney practicing in the area of state and local taxation or property tax appraisals, and one member shall be a professional with experience in the field of accounting or finance and with experience in state and local taxation matters. No more than two members of the board may be from the same political party as that term is defined in Iowa Code section 43.2.

c. The property assessment appeal board shall organize by appointing a secretary who shall take the same oath of office as the members of the board. The board may employ additional personnel as it finds necessary. All personnel employed by the board shall be considered state employees and are subject to the merit system provisions of Iowa Code chapter 8A, subchapter IV.

71.21(2) *Powers and duties of the board.* The property assessment appeal board shall:

a. Review any final decision, finding, ruling, determination, or order of a local board of review relating to assessment protests, valuation, or application of an equalization order.

b. Affirm, reverse, or modify a final decision, finding, ruling, determination, or order of a local board of review.

c. Order the payment or refund of property taxes in a matter over which the board has jurisdiction.

d. Grant other relief or issue writs, orders, or directives that the board deems necessary or appropriate in the process of disposing of a matter over which the board has jurisdiction.

e. Subpoena documents and witnesses and administer oaths.

f. Adopt administrative rules pursuant to Iowa Code chapter 17A for the administration and implementation of its powers, including rules for practice and procedure for protests filed with the board, the manner in which hearings on appeals of assessments shall be conducted, filing fees to be imposed by the board, and for the determination of the correct assessment of property which is the subject of an appeal.

g. Adopt administrative rules pursuant to Iowa Code chapter 17A necessary for the preservation of order and the regulation of proceedings before the board, including forms or notice and the service thereof, which rules shall conform as nearly as possible to those in use in the courts of this state.

h. If an appeal to district court is taken from the action of the property assessment appeal board, notice of appeal shall be served as an original notice on the secretary of the board after the written notice of appeal has been filed with the clerk of district court.

71.21(3) *General counsel.* The property assessment appeal board shall employ a competent attorney to serve as its general counsel, and assistants to the general counsel as it finds necessary for the full and efficient discharge of its duties. The general counsel is the attorney for, and legal advisor of, the board. The general counsel or an assistant to the general counsel shall provide the necessary legal advice to the board in all matters and shall represent the board in all actions instituted in a court challenging the validity of a rule or order of the board. The general counsel shall devote full time to the duties of the office. During employment as general counsel to the board, the counsel shall not be a member of a political committee, contribute to a political campaign, participate in a political campaign, or be a candidate for partisan political office. The general counsel and assistants to the general counsel shall be considered state employees and are subject to the merit system provisions of Iowa Code chapter 8A, subchapter IV.

71.21(4) *Compensation.* The members of the property assessment appeal board shall receive compensation from the state commensurate with the salary of a district judge. The members of the board shall be considered state employees for purposes of salary and benefits and are subject to the merit system provisions of Iowa Code chapter 8A, subchapter IV. Members of the board and any employees of the board, when required to travel in the discharge of official duties, shall be paid their actual and necessary expenses incurred in the performance of their duties.

71.21(5) *Appeal board review committee.* Effective January 1, 2012, a property assessment appeal board review committee is established. Staffing assistance to the committee shall be provided by the department of revenue. The committee shall consist of six members of the general assembly, two appointed by the majority leader of the senate, one appointed by the minority leader of the senate, two appointed by the speaker of the house of representatives, and one appointed by the minority leader of the house of representatives; the director of revenue or the director's designee; a county assessor appointed by the Iowa state association of counties; and a city assessor appointed by the Iowa league of cities.

The property assessment appeal board review committee shall review the activities of the property assessment appeal board since its inception. The review committee may recommend the revision of any rules, regulations, directives, or forms relating to the activities of the property assessment appeal board.

The review committee shall report to the general assembly by January 15, 2013. The report shall include any recommended changes in laws relating to the property assessment appeal board, the reasons for the committee's recommendations, and any other information the committee deems advisable.

71.21(6) *Applicability and scope.* These subrules set forth herein govern the proceedings for all cases in which the property assessment appeal board (board) has jurisdiction to hear appeals from the action of a local board of review. For the purpose of these subrules, the following definitions shall apply:

"Appellant" means the party filing the notice of appeal with the secretary of the property assessment appeal board.

"Board" means the property assessment appeal board as created by chapter 150 of the Acts of the Eighty-first General Assembly and governed by Iowa Code chapter 17A and sections 421.1A and 441.37A.

"Department" means the Iowa department of revenue.

"Local board of review" means the board of review as defined by Iowa Code section 441.31.

"Party" means a property owner, an aggrieved taxpayer, an assessor, an appellant or an appellee in an appeals process before the board.

"Presiding officer" means the chairperson, member or members of the property assessment appeal board who preside over an appeal of proceedings before the property assessment appeal board.

"Secretary" means the secretary for the property assessment appeal board.

71.21(7) *Appeal and jurisdiction.* Notice of appeal confers jurisdiction for the board. The procedure for appeals and parameters for jurisdiction are as follows:

a. Jurisdiction is conferred upon the board by written notice of appeal given to the secretary. The written notice of appeal shall include a petition setting forth the basis of the appeal and the relief sought. The written notice of appeal shall be filed with the secretary within 20 days after the postmarked date of the disposition of the protest by the local board of review. Appeals postmarked within 20 days after the postmarked date of the disposition of the protest by the local board of review shall also be considered to have been timely filed. The appellant may appeal the action of the board of review relating to protests of assessment, valuation, or the application of an equalization order. A party may request to participate by telephone in any hearing before the board.

b. The notice of appeal must be proper in format and content as set forth in subrule 71.21(9), which governs the notice of appeal. Notice of appeal may be delivered in person, mailed by first-class mail, or delivered to an established courier service for immediate delivery to the secretary of the board. The mailing address for the board is Secretary of the Property Assessment Appeal Board, 401 SW 7th Street, Suite D, Des Moines, Iowa 50309-4634.

71.21(8) *Scope of review.* The board shall determine anew all questions arising before the local board of review which relate to the liability of the property to assessment or the amount thereof. The board will consider only those grounds set out in the protest to the local board of review. However, additional evidence may be introduced in the board proceedings relevant to the grounds set out in the protest. The board shall afford each party an opportunity to present briefs and oral arguments. There shall be no presumption as to the correctness of the valuation of the assessment appealed from.

71.21(9) *Form of appeal.* The written notice of appeal shall contain a caption in the following form:

THE PROPERTY ASSESSMENT APPEAL BOARD
401 SW 7th STREET, SUITE D
DES MOINES, IOWA 50309-4634

IN THE MATTER OF _____ (Appellant's name and address)	NOTICE OF APPEAL and PETITION DOCKET NO. _____ (Docket No. assigned by board)

The notice of appeal shall include:

a. The appellant's name and mailing address;

b. A copy of the petition to the local board of review;

c. Copies of all evidence submitted to the local board of review in support of the petition to the local board of review;

d. A copy of the postmarked envelope and a copy of the letter of disposition by the local board of review;

e. A short and plain statement of the claim showing that the appellant is entitled to relief;

f. The relief sought; and

g. The signature of the appealing party or the party's legal representative.

To have legal representation before the board, a party must file a valid and complete power of attorney form as provided by the board or in compliance with the power of attorney form provided by the board.

71.21(10) *Notice to local board of review.* The secretary shall mail a copy of the appellant's written notice of appeal and petition to the local board of review whose decision is being appealed. Notice to all affected taxing districts shall be deemed to have been given when written notice is provided to the local board of review.

71.21(11) *Certification by local board of review.* Within 14 days after notice of appeal is given, the local board of review shall certify to the board all records, documents, or reports, or disposition order or directive from which an appeal is taken, the complete property record card for the subject property, the protest hearing minutes of the local board of review kept pursuant to Iowa Code chapter 21, and all other pertinent information.

The local board of review shall submit to the board in writing the name, address, and telephone number of the attorney representing the local board of review before the board. The local board of review may make a written request for additional time to certify a copy of its record to the board.

71.21(12) *Docketing.* Appeals shall be assigned consecutive docket numbers. Records consisting of the case name and the corresponding docket number assigned to the case must be maintained by the secretary. The records of each case shall also include each action and each act done, with the proper dates as follows:

a. The title of the appeal including jurisdiction and parcel identification number;

b. Brief statement of the grounds for the appeal and the relief sought;

c. Postmarked date of the local board of review's letter of disposition;

d. The manner and date/time of service of notice of appeal;

e. Date of notice of hearing;

f. Date of hearing; and

g. The decision by the board, or other disposition of the case, and date thereof.

71.21(13) *Appearances.* A party may appear in person, by legal representative or through an attorney. In order to be considered the legal representative before the board, a valid power of attorney form as provided by the board or in compliance with the power of attorney form provided by the board must be properly completed and filed with the board. An attorney shall file an appearance. All orders, correspondence, or other documents shall be served on the designated individual.

71.21(14) *Filing of papers.* After the notice of appeal and petition have been filed, either in person , mailed by first-class mail, or delivered to an established courier service for immediate delivery, all motions, pleadings, briefs, and other papers to be filed shall be filed with the secretary at 401 SW 7th Street, Suite D, Des Moines, Iowa 50309-4634. Motions, pleadings, briefs, and other papers to be filed with the board shall be delivered in person, mailed by first-class mail, or delivered to an established courier service. Parties shall also send copies to all other parties of record, unless represented by counsel of record, and then to such counsel.

a. For most filings in a docket made with the board, only an original is required.

b. For exhibits and other documents to be introduced at hearing, an original plus two copies are required.

c. The board or presiding officer may request additional copies.

71.21(15) *Motions.* All motions shall be in writing, shall be filed with the secretary and shall contain the reasons and grounds supporting the motion. The board shall act upon such motions as justice may require. Motions based on matters which do not appear of record shall be supported by affidavit. Any party may file a written response to a motion no later than 10 days from the date the motion is filed, unless the time period is extended or shortened by the board or presiding officer.

71.21(16) *Authority of board to issue procedural orders.* The board may issue preliminary orders regarding procedural matters. The secretary shall mail copies of all procedural orders to the parties.

71.21(17) *Members participating.* An appeal may be reviewed and considered by less than a majority of the members of the board, and the chairperson of the board may assign members to consider appeals. Orders and decisions shall be signed by one member of the board and shall name participating members. Decisions shall affirm, modify, or reverse the decision, order, or directive from which an appeal was made. In order for the decision to be valid, a majority of the board must concur on the decision on appeal.

71.21(18) *Notice of hearing.* Unless otherwise designated by the board, the hearing shall be held in the hearing room of the board at 401 SW 7th Street, Suite D, Des Moines, Iowa. All hearings are open to the public. If a hearing is requested, the secretary shall mail a notice of hearing to the parties at least 30 days prior to the hearing. The notice of hearing shall contain the following information:

a. A statement of the date, time, and place of the hearing;

b. A statement of legal authority and jurisdiction under which the hearing is to be held;

c. A reference to the particular sections of the statutes and rules involved;

d. That the parties may appear and present oral arguments;

e. That the parties may submit evidence and briefs;

f. That the hearing will be electronically recorded by the board;

g. That a party may obtain a certified court reporter for the hearing at the party's own expense;

h. That audio visual aids and equipment are to be provided by the party intending to use them;

i. A statement that, upon submission of the appeal, the board will take the matter under advisement. A letter of disposition will be mailed to the parties; and

j. A compliance notice required by the Americans with Disabilities Act (ADA).

71.21(19) *Transcript of hearing.* All hearings shall be electronically recorded. Any party may provide a certified court reporter at the party's own expense. Any party may request a transcription of the hearing. The board reserves the right to impose a charge for copies and transcripts.

71.21(20) *Continuance.* Any hearing may be continued for "good cause." Requests for continuance prior to the hearing shall be in writing and promptly filed with the secretary of the board immediately upon "the cause" becoming known. An emergency oral continuance may be obtained from the board or presiding officer based on "good cause" and at the discretion of the board or presiding officer. In determining whether to grant a continuance, the board or presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirements;

g. The existence of a conflict in the schedules of counsel, parties, or witnesses;

h. The timeliness of the request; and

i. Other relevant factors.

71.21(21) *Telephone proceedings.* The board, at its discretion and based on "good cause," may conduct a telephone conference in which all parties have an opportunity to participate. The board will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when the location is chosen.

71.21(22) *Disqualification of board member.* A board member or members must, on their own motion or on a motion from a party in the proceeding, withdraw from participating in an appeal if there are circumstances that warrant disqualification.

a. A board member or members shall withdraw from participation in the making of any proposed or final decision in an appeal before the board if that member is involved in one of the following circumstances:

(1) Has a personal bias or prejudice concerning a party or a representative of a party;

(2) Has personally investigated, prosecuted, or advocated in connection with the appeal, the specific controversy underlying that appeal, or another pending factually related matter, or a pending factually related controversy that may culminate in an appeal involving the same parties;

(3) Is subject to the authority, direction, or discretion of any person who has personally investigated, prosecuted, or advocated in connection with that matter, the specific controversy underlying the appeal, or a pending factually related matter or controversy involving the same parties;

(4) Has acted as counsel to any person who is a private party to that proceeding within the past two years;

(5) Has a personal financial interest in the outcome of the appeal or any other significant personal interest that could be substantially affected by the outcome of the appeal;

(6) Has a spouse or relative within the third degree of relationship who:

1. Is a party to the appeal, or an officer, director or trustee of a party;

2. Is a lawyer in the appeal;

3. Is known to have an interest that could be substantially affected by the outcome of the appeal; or

4. Is likely to be a material witness in the appeal; or

(7) Has any other legally sufficient cause to withdraw from participation in the decision making in that appeal.

b. Motion for disqualification. If a party asserts disqualification on any appropriate ground, including those listed in paragraph *"a,"* the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.11. The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification, but must establish the grounds by the introduction of evidence into the record.

If a majority of the board determines that disqualification is appropriate, the board member shall withdraw. If a majority of the board determines that withdrawal is not required, the board shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal and a stay as provided under 701—Chapter 7.

c. The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other functions of the board, including fact gathering for purposes other than investigation of the matter which culminates in an appeal. Factual information relevant to the merits of an appeal received by a person who later serves as presiding officer or a member of the board shall be disclosed if required by Iowa Code section 17A.11 and this rule.

d. Withdrawal. In a situation where a presiding officer or any other board member knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

71.21(23) *Consolidation and severance.* A majority of the board may determine, in its discretion, if consolidation or severance of issues or proceedings should be performed in order to efficiently resolve matters on appeal before the board.

a. *Consolidation.* The presiding officer may consolidate any or all matters at issue in two or more appeal proceedings where:

(1) The matters at issue involve common parties or common questions of fact or law;

(2) Consolidation would expedite and simplify consideration of the issues involved; and

(3) Consolidation would not adversely affect the rights of any of the parties to those proceedings.

b. *Severance.* The presiding officer may, for good cause shown, order any appeal proceedings or portions of the proceedings severed.

71.21(24) *Withdrawal.* An appellant may withdraw the appeal prior to the hearing. Such a withdrawal of an appeal must be in writing and signed by the appellant or the appellant's legal representative. Unless otherwise provided, withdrawal shall be with prejudice and the appellant shall not be able to refile the appeal. Within 20 days of the board granting a withdrawal of appeal, the appellant may make a motion to reopen the file and rescind the withdrawal based upon fraud, duress, undue influence, or mutual mistake.

71.21(25) *Prehearing conference.* An informal conference of parties may be ordered at the discretion of the board or presiding officer or at the request of any party for any appropriate purpose. Any agreement reached at the conference shall be made a part of the record in the manner directed by the board or presiding officer.

71.21(26) *Hearing procedures.* A party to the appeal may request a hearing, or the appeal may proceed without a hearing. The local board of review may be present and participate at such hearing.

a. Authority of presiding officer. The presiding officer presides at the hearing and may rule on motions, require briefs, issue a decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

b. Representation. Parties to the appeal have the right to participate or to be represented in all hearings. Any party may be represented by an attorney or another person authorized by law. To have legal representation before the board, a party must complete a power of attorney form as provided by the board or in compliance with the power of attorney form provided by the board.

c. Participation in hearing. The parties to the appeal have the right to introduce evidence relevant to the grounds set out in the protest to the local board of review. Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

d. Decorum. The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

e. Conduct of the hearing. The presiding officer shall conduct the hearing in the following manner:

(1) The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

(2) The parties shall be given an opportunity to present opening statements;

(3) The parties shall present their cases in the sequence determined by the presiding officer;

(4) Each witness shall be sworn or affirmed by the presiding officer and shall be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law; and

(5) When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

71.21(27) *Discovery*

a. Discovery procedure. Discovery procedures applicable in civil actions are available to parties in cases before the board. Unless lengthened or shortened by these rules, the board or presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

b. Discovery motions. Prior to filing any motion related to discovery, parties shall make a good-faith effort to resolve discovery disputes without the involvement of the board or presiding officer. Any motion related to discovery shall allege that the moving party has made a good-faith attempt to resolve the discovery issues involved with the opposing party. Opposing parties shall be given the opportunity to respond within 10 days of the filing of the motion unless the time is shortened by order of the board or presiding officer. The board or presiding officer may rule on the basis of the written motion and any response or may have a hearing or other proceedings on the motion.

c. Admissibility of evidence. Evidence obtained in discovery may be used in the case proceeding if that evidence would otherwise be admissible in that proceeding.

71.21(28) *Subpoenas*

a. Issuance of Subpoena for Witness.

(1) An agency subpoena shall be issued to a party on request. The request shall be in writing and include the name, address, and telephone number of the requesting party. In absence of good cause for permitting later action, a request for subpoena must be received at least 10 days before the scheduled hearing.

(2) Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

b. Issuance of Subpoena for Production of Documents.

(1) An agency subpoena shall be issued to a party on request. The request shall be in writing and include the name, address, and telephone number of the requesting party. In absence of good cause for permitting later action, a request for subpoena must be received at least 20 days before the scheduled hearing.

(2) Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas.

c. Motion to quash or modify. Upon motion, the board or presiding officer may quash or modify a subpoena for any lawful reason.

71.21(29) *Evidence.*

a. Admissibility. The presiding officer shall rule on admissibility of evidence and may take official notice of facts in accordance with all applicable requirements of law.

b. Stipulations. Stipulation of facts by the parties is encouraged. The presiding officer may make a decision based on stipulated facts.

c. Scope of admissible evidence. Evidence in the proceeding shall be confined to the issues contained in the notice from the board prior to the hearing, unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. Admissible evidence is that which, in the opinion of the board, is determined to be material, relevant, or necessary for the making of a just decision. Irrelevant, immaterial or unduly repetitious evidence may be excluded. A finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial. Hearsay evidence is admissible. The rules of privilege apply in all proceedings before the board.

d. Exhibits and briefs. The party seeking admission of an exhibit must provide an opposing party with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents to be used as evidence shall be provided to the opposing party at least 10 days prior to the hearing, unless the time period is extended or shortened by the board or presiding officer. All exhibits and briefs admitted into evidence shall be appropriately marked and be made part of the record. The appellant shall mark exhibits with consecutive numbers. The appellee shall mark exhibits with consecutive letters.

e. Objections. Any party may object to specific evidence or may request limits on the scope of examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which the objection is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

f. Offers of proof. Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

71.21(30) *Settlements.* Parties to a case may propose to settle all or some of the issues in the case at any time prior to the issuance of a final decision. The board or presiding officer will not approve settlements unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest. Board adoption of a settlement constitutes the final decision of the board on issues addressed in the settlement.

71.21(31) *Appeals records.* The record of the appeal is maintained at the office of the board. Unless the record is held confidential, parties and members of the public may examine the record and obtain copies of documents.

71.21(32) *Motion to reopen records.* The board or presiding officer, on the board's or presiding officer's own motion or on the motion of a party, may reopen the record for the reception of further evidence. A motion to reopen the record may be made anytime prior to the issuance of a final decision.

71.21(33) *Rehearaing and reconsideration.*

a. Application for rehearing or reconsideration. Any party to a case may file an application for rehearing or reconsideration of the final decision. The application for rehearing or reconsideration shall be filed within 20 days after the final decision in the case is issued.

b. Contents of application. Applications for rehearing or reconsideration shall specify the findings of fact and conclusions of law claimed to be erroneous, with a brief statement of the alleged grounds of error. Any application for rehearing or reconsideration asserting that evidence has arisen since the final order was issued as a ground for rehearing or reconsideration shall present the evidence by affidavit that

includes an explanation of the competence of the person to sponsor the evidence and a brief description of the evidence sought to be included.

c. *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the board shall serve copies on all parties.

d. *Requirements for objections to applications for rehearing or reconsideration.* An answer or objection to an application for rehearing or reconsideration must be filed within 14 days of the date the application was filed with the board, unless otherwise ordered by the board.

e. *Disposition.* Any application for a rehearing shall be deemed denied unless the board grants the application within 20 days after its filing.

71.21(34) *Dismissal.* If a party fails to appear or participate in an appeal hearing after proper service of notice, the presiding officer may dismiss the appeal unless a continuance is granted for good cause. If an appeal is dismissed for failure to appear, the board shall have no jurisdiction to consider any subsequent appeal on the appellant's protest.

71.21(35) *Waivers.*

a. In response to a request, or on its own motion, the board may grant a waiver from a rule adopted by the board, in whole or in part, as applied to a specific set of circumstances, if the board finds, based on clear and convincing evidence, that:

(1) The application of the rule would pose an undue hardship on the person for whom the waiver is requested;

(2) The waiver would not prejudice the substantial rights of any person;

(3) The provisions of the rule subject to a petition for waiver are not specifically mandated by statute or another provision of law; and

(4) Substantially equal protection of public health, safety, and welfare will be afforded by means other than that prescribed in the rule for which the waiver is requested.

b. Persons requesting a waiver may submit their request in writing. The waiver request must state the relevant facts and reasons the requester believes will justify the waiver, if the reasons have not already been provided to the board in another pleading.

c. Grants or denials of waiver requests shall contain a statement of the facts and reasons upon which the decision is based. The board may condition the grant of the waiver on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question. The board may at any time cancel a waiver upon appropriate notice and opportunity for hearing.

71.21(36) *Appeals of board decisions.* A party may seek judicial review of a decision rendered by the board by filing a written notice of appeal with the clerk of the district court within 20 days after the letter of disposition of the appeal by the board is mailed to the appellant.

71.21(37) *Time requirements.* Time shall be computed as provided in Iowa Code section 4.1(34).

71.21(38) *Judgment of the board.* Nothing stated in this rule should be construed as prohibiting the exercise of honest judgment, as provided by law, by the board in matters pertaining to valuation and assessment of individual properties.

This rule is intended to implement Iowa Code sections 421.1, 421.1A, 421.2, 441.37A, 441.38 and 441.49 and chapter 17A.

701—71.22(428,441) Assessors.

71.22(1) *Conflict of interest.* An assessor shall not act as a private appraiser, or as a real estate broker or option agent in the jurisdiction in which serving as assessor (1976 O.A.G. 744).

71.22(2) *Listing of property.*

a. Forms. Assessors may design and use their own forms in lieu of those prescribed by the department of revenue provided that the forms contain all information contained on the prescribed form, are not substantially different from the prescribed form, and are approved by the director of revenue.

b. Assessment rolls. Assessment rolls must be prepared in duplicate for each property in a reassessment year as defined in Iowa Code section 428.4. However, the copy of the roll does not have to

be issued to a taxpayer unless there is a change in the assessment or the taxpayer requests the issuance of the duplicate copy.

c. Whenever a date specified in Iowa Code chapter 441 falls on a Saturday, Sunday, or legal holiday, the action required to be completed on or before that date shall be considered to have been timely completed if performed on or before the following day which is not a Saturday, Sunday, or holiday.

d. Buildings erected or improvements made by a person other than the owner of the land on which they are located are to be assessed to the owner of the buildings or improvements. Unpaid taxes are a lien on the buildings or improvements and not a lien on the land on which they are located.

71.22(3) *Notice of protest.* If a protest or appeal is filed with the board of review, property assessment appeal board, or district court against the assessment of property valued at $5 million or more, the assessor shall provide notice to the school district in which the property is located within ten days of the filing of the protest or the appeal, as applicable.

This rule is intended to implement Iowa Code chapter 428 and Iowa Code chapter 441 as amended by 2006 Iowa Acts, House File 2797.

701—71.23 and **71.24** Reserved.

701—71.25(441,443) Omitted assessments.

71.25(1) *Property subject to omitted assessment.*

a. Land and buildings. An omitted assessment can be made only if land or buildings were not listed and assessed by the assessor. The failure to list and assess an entire building is an omission for which an omitted assessment can be made even if the land upon which the building is located has been listed and assessed. See *Okland v. Bilyeu,* 359 N.W.2d 412 (Iowa 1984). However, the failure to consider the value added as a result of an improvement made does not constitute an omission for which an omitted assessment can be made if the building or land to which the improvement was made has been listed and assessed.

b. Previously exempt property. Property which has been erroneously determined to be exempt from taxation may be restored to taxation by the making of an omitted assessment. See *Talley v. Brown,* 146 Iowa 360, 125 N.W. 243 (1910). An omitted assessment is also made to restore to taxation previously exempt property which ceases to be eligible for an exemption.

71.25(2) *Officials authorized to make an omitted assessment.*

a. Local board of review. A local board of review may make an omitted assessment of property during its regular session only if the property was not listed and assessed as of January 1 of the current assessment year. For example, during its regular session which begins May 1, 1986, a local board of review may make an omitted assessment only of property that was not assessed by the assessor as of January 1, 1986. During that session, the board of review could not make an omitted assessment for an assessment year prior to 1986.

b. County auditor and local assessor. The county auditor and local assessor may make an omitted assessment. However, no omitted assessment can be made by the county auditor or local assessor if taxes based on the assessment year in question have been paid or otherwise legally discharged. For example, if a tract of land was listed and assessed and taxes levied against that assessment have been paid or legally discharged, no omitted assessment can be made of a building located upon that tract of land even though the building was not listed and assessed at the time the land was listed and assessed. See *Okland v. Bilyeu,* 359 N.W.2d 412, 417 (Iowa 1984).

c. County treasurer. The county treasurer may make an omitted assessment within two years from the date the tax list which should have contained the assessment should have been delivered to the county treasurer. For example, for the 1999 assessment year, the tax list is to be delivered to the county treasurer on or before June 30, 2000. Thus, the county treasurer may make an omitted assessment for the 1999 assessment year at any time on or before June 30, 2002. The county treasurer may make an omitted assessment of a building even if taxes levied against the land upon which the building is located have been paid or legally discharged. See *Okland v. Bilyeu,* 359 N.W.2d 412, 417 (Iowa 1984). The county

treasurer may not make an omitted assessment if the omitted property is no longer owned by the person who owned the property on January 1 of the year the original assessment should have been made.

d. *Director of revenue.* The director of revenue may make an omitted assessment of any property assessable by the director at any time within two years from the date the assessment should have been made.

This rule is intended to implement Iowa Code chapter 440 and sections 443.6 through 443.15 as amended by 1999 Iowa Acts, chapter 174.

701—71.26(441) Assessor compliance. The assessor shall determine the value of real property in accordance with rules adopted by the department of revenue and in accordance with forms and guidelines contained in the Iowa Real Property Appraisal Manual prepared by the department. The assessor may use an alternative manual to value property if it is a unique type of property not covered in the manual prepared by the department.

If the department finds that an assessor is not in compliance with the rules of the department relating to valuation of property or has disregarded the forms and guidelines contained in the real property appraisal manual, the department shall notify the assessor and each member of the conference board for that assessing jurisdiction. The notice shall be mailed by restricted certified mail and shall specify the areas of noncompliance and the steps necessary to achieve compliance. The notice shall also inform the assessor and conference board that if compliance is not achieved, a penalty may be imposed.

The conference board shall respond to the department within 30 days of receipt of the notice of noncompliance. The conference board may respond to the notice by asserting that the assessor is in compliance with the rules, guidelines, and forms of the department or by informing the department that the conference board intends to submit a plan of action to achieve compliance. If the conference board responds to the notification by asserting that the assessor is in compliance, a hearing before the director of revenue shall be held on the matter within 60 days of receipt of the notice of noncompliance. If it is agreed that the assessor is not in compliance, the conference board shall submit a plan of action within 60 days of receipt of the notice of noncompliance.

The plan shall contain a time frame under which compliance shall be achieved, which shall be no later than January 1 of the following assessment year. The plan of action shall contain the signature of the assessor and of the chairperson of the conference board. The department shall review the plan to determine whether the plan is sufficient to achieve compliance. Within 30 days of receipt of the plan, the department shall notify the assessor and the chairperson of the conference board that it has accepted the plan or that it is necessary to submit an amended plan of action.

By January 1 of the assessment year following the calendar year in which the plan was submitted to the department, the conference board shall submit a report to the department verifying that the plan of action was followed and compliance has been achieved. The department may conduct a field inspection to ensure that the assessor is in compliance. By January 31, the department shall notify the assessor and the conference board, by restricted certified mail, either that compliance has been achieved or that the assessor remains in noncompliance. If the department determines that the assessor remains in noncompliance, the department shall take steps to withhold up to 5 percent of the reimbursement payment authorized in Iowa Code section 425.1 until the director of revenue determines that the assessor is in compliance.

If the conference board disputes the determination of the department, the chairperson of the conference board may appeal the determination to the state board of tax review.

This rule is intended to implement Iowa Code Supplement section 441.21.

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CHAPTER 72
EXAMINATION AND CERTIFICATION OF ASSESSORS AND DEPUTY ASSESSORS

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

701—72.1(441) Application for examination.

72.1(1) The application for the examination shall be made on a form prescribed by the director and shall constitute an integral part of the examination. The application form shall require information as to the education, training, and experience of the applicant and such other information as the director may deem pertinent. Applications must be received by the department at least three days prior to the date of the examination. Applications filed on or after the effective date of this rule shall be considered public records pursuant to Iowa Code chapter 22 (*City of Dubuque v. Telegraph Herald, Inc.,* 297 N.W.2d 523 (Iowa 1980); 1982 O.A.G. 3).

72.1(2) Upon receipt of a properly filed application, the department shall issue to the applicant a card granting the applicant admission to the examination. No applicant shall be admitted to the examination without presenting the admission card to the examination monitor.

72.1(3) Whenever there occurs a vacancy in the office of assessor, the director shall, upon the written request of the examining board or conference board, forward to the board a copy of any applications requested by either board. When a vacancy occurs in the office of deputy assessor, the director shall, upon the written request of the assessor, forward to the assessor a copy of any applications requested by the assessor.

This rule is intended to implement Iowa Code section 441.5.

701—72.2(441) Examinations.

72.2(1) *Examination questions.* Examination questions and answers shall not be made available to persons other than employees of the department authorized by the director to have access to them. Persons who take the examination shall not discuss with anyone the specific questions contained in the examination, nor shall they reveal any specific examination question to another person. This shall not restrict persons who have taken the examination from discussing the general subject matter of the examination.

72.2(2) *Materials and supplies.* All examination materials shall be furnished by the department and must be returned to the monitor prior to the applicants' leaving the examination room site. During the examination, applicants may be permitted to use their own slide rules or electronic calculators as long as their use does not disturb other applicants. Applicants shall not be permitted to bring any other materials into the examination room, nor shall they be permitted to take any materials from the examination room except their own slide rules or electronic calculators.

72.2(3) *Personal conduct during examination.* To preserve the integrity of the examinations and the assessing profession, each person taking an examination shall exhibit behavior which is not disruptive to other applicants and no person shall cheat or attempt to cheat on an examination in any manner.

72.2(4) *Monitors.* The director shall, prior to the examination, provide all applicants with a copy of subrules 72.2(1), 72.2(2), and 72.2(3). Examination monitors shall have the authority to enforce these rules in accordance with subrule 72.2(5).

72.2(5) *Violations.* Any person who intentionally violates any of the provisions of subrule 72.2(1), 72.2(2), or 72.2(3) shall be subject to the penalties specified in this subrule. If an infraction of subrule 72.2(1), 72.2(2), or 72.2(3) occurs and is detected and confirmed during the examination, the examination of the person committing the infraction shall be confiscated by the monitor and shall not be scored. If the infraction is detected and confirmed after the examination of the person committing the infraction has been scored, the score resulting from that examination shall be reduced to a failing grade and, if necessary, the list of candidates eligible for the position of city or county assessor or deputy assessor shall be adjusted accordingly.

72.2(6) *Review of examination.* Persons who have taken the examination may, after presenting proper identification, review their examinations in the office of the department's property tax section within 60 days after the date the examination has been administered. The review shall consist only of

examining the person's own answer sheet indicating the questions answered incorrectly and the question book. Persons reviewing their examinations shall not be permitted to take notes or otherwise transcribe information during this review, nor shall they have access to the answers to questions contained in the examination. Persons who review their examinations shall be permitted to do so only once, and shall not be eligible to take an examination for the position of assessor or deputy assessor for a period of at least 30 days following the date of the review of the examinations.

72.2(7) *Assessor examination scores.* The scores of persons who take the assessor or deputy assessor examination shall be considered public records pursuant to Iowa Code chapter 22.

72.2(8) Rescinded effective April 3, 1985.

72.2(9) *Length of examination.* The director shall determine the appropriate amount of time in which persons may take the examination. Any person who arrives at the examination site after the examination has begun shall not be permitted to complete the examination after the time scheduled for its completion.

72.2(10) *Retaking examination.* A person who takes the examination for the position of city or county assessor shall not be eligible to take the examination again for a period of at least 30 days following the date the examination was taken, subject also to the restrictions contained in subrule 72.2(5).

72.2(11) *Frequency of examination.* At the discretion of the director, statewide examinations for the positions of assessor or deputy assessor may be held more than twice a year in Des Moines.

72.2(12) *Make-up examination prohibited.* Special make-up examinations shall not be held for persons who applied to take the examination for the position of assessor or deputy assessor but who did not for any reason appear at the scheduled examination site.

This rule is intended to implement Iowa Code section 441.5.

701—72.3(441) Equivalent of high school diploma. Only persons who possess a high school diploma or its equivalent are eligible to take the examination. The equivalent of high school diploma shall consist of a high school equivalency certificate issued by the department of public instruction pursuant to Iowa Code chapter 259A, a similar document issued by the U.S. armed forces, or a similar document issued by another state.

This rule is intended to implement Iowa Code section 441.5.

701—72.4(441) Appraisal-related experience. Appraisal-related experience shall include only such experience as may have been obtained through full-time paid employment consisting of the actual appraisal and valuation of property. The experience shall have included the physical inspection of property as part of the appraisal process and the setting of values for parcels of property.

This rule is intended to implement Iowa Code section 441.5.

701—72.5(441) Regular certification.

72.5(1) To obtain regular certification, a person must (a) possess two years' appraisal-related experience at the time of successfully writing the examination, or (b) have obtained temporary certification, received a provisional appointment as assessor, and successfully completed the course of study prescribed by the director as provided in Iowa Code section 441.5.

72.5(2) If subsequent to the successful writing of the examination a person who has not received a provisional appointment as assessor attains two years' appraisal-related experience, the person must again successfully write the examination to obtain regular certification.

72.5(3) A regular certificate shall expire two years after the most recent date certification is granted by the director. However, the regular certificate of a person who receives an appointment as assessor shall remain valid until the person's resignation or removal from the position of assessor, even though more than two years have expired since certification was last granted.

72.5(4) A regular certificate may at any time be renewed if the person possessing such a certificate successfully rewrites the assessor examination. A regular certificate so renewed shall remain valid for a period of two years from the date certification was last granted, except as provided in subrule 72.5(3).

This rule is intended to implement Iowa Code section 441.5.

701—72.6(441) Temporary certification.

72.6(1) To obtain temporary certification, a person who does not possess two years' appraisal-related experience must successfully write the examination for the position of assessor.

72.6(2) The temporary certificate of a person who does not receive a provisional appointment as assessor shall expire two years after the date the certification is granted by the director.

72.6(3) The temporary certificate of a person who does not receive a provisional appointment as assessor may be renewed if the person successfully rewrites the assessor examination. A temporary certificate so renewed shall remain valid for a period of two years from the date temporary certification was last granted.

72.6(4) The temporary certificate of a person who receives a provisional appointment as assessor shall expire upon the person's successful completion of the course of study provided in Iowa Code section 441.5 and the granting of regular certification by the director.

72.6(5) The director shall revoke the temporary certificate of a person who receives a provisional appointment as assessor and who does not complete the course of study provided in Iowa Code section 441.5 within 18 months of the person's appointment as assessor. Upon the revocation of an assessor's temporary certificate, the director shall notify the person of the revocation and shall notify the appropriate conference board of the revocation and that the assessor whose temporary certificate has been revoked is no longer eligible to hold the position of assessor.

This rule is intended to implement Iowa Code section 441.5.

701—72.7(441) Restricted certification. Assessors granted restricted certificates by virtue of their holding office on January 1, 1976, shall retain the restricted certificate even though they may obtain regular certification as provided in Iowa Code section 441.5. However, once an assessor holding office on January 1, 1976, resigns or is removed from the position held on that date, the restricted certificate shall be canceled by the director. An assessor holding a restricted certificate may be reappointed to the position for which the restricted certificate is valid without having to obtain regular or temporary certification. The assessor must, however, satisfy the continuing education requirement contained in Iowa Code section 441.8 to be eligible for reappointment.

This rule is intended to implement Iowa Code sections 441.5 and 441.6.

701—72.8(441) Deputy assessors—regular certification.

72.8(1) A person who successfully writes the examination for assessor or deputy assessor shall be granted regular deputy assessor certification by the director and shall be eligible for appointment to a deputy assessor position.

72.8(2) A deputy assessor regular certificate shall expire two years after the most recent date certification is granted, except as provided in subrule 72.8(3).

72.8(3) The deputy assessor regular certificate of a person who is appointed deputy assessor shall remain valid until the person's resignation or removal from the position of deputy assessor, or until the death, resignation, or removal of the assessor who appointed the person as deputy assessor. However, in the event of the death, resignation, or removal of the assessor, the deputy assessor certificate of the chief deputy shall remain valid until a new assessor is appointed. Nothing contained in this rule shall be construed to relieve a deputy assessor holding a restricted certificate of the continuing education requirements for the retention of the deputy assessor's position as provided in Iowa Code section 441.8.

72.8(4) A deputy assessor regular certificate may at any time be renewed if the person possessing such a certificate successfully rewrites the assessor or deputy assessor examination. A deputy assessor certificate so renewed shall remain valid for a period of two years from the date certification was last granted, except as provided in subrule 72.8(3).

This rule is intended to implement Iowa Code section 441.5.

701—72.9(441) Deputy assessors—restricted certification. Deputy assessors granted restricted certification by virtue of their holding office on January 1, 1976, shall retain the restricted certificate even though they may obtain regular certification as provided in Iowa Code section 441.5. However,

once a deputy assessor resigns or is removed from the position for which the restricted certificate is valid, the restricted certificate shall be canceled by the director. Nothing contained in this rule shall be construed to relieve a deputy assessor holding a restricted certificate of the continuing education requirements for the retention of their position as provided in Iowa Code section 441.8.

This rule is intended to implement Iowa Code sections 441.5 and 441.11.

701—72.10(441) Appointment of deputy assessors.

72.10(1) The appointments of deputy assessors holding regular certificates shall expire upon the death, resignation, or removal of the assessor, except that the appointment of the chief deputy assessor shall not expire until the appointment of a new assessor, nor shall the restricted certificate of a deputy assessor expire at that time.

72.10(2) After the appointment of a new assessor, the assessor may appoint one or more deputy assessors from the registers of persons certified as eligible for appointment as assessor or deputy assessor or the assessor may appoint as deputy assessor a person holding a restricted deputy assessor certificate valid for that assessing jurisdiction. The assessor shall notify the director immediately of persons appointed as deputy assessors, the vacating of office by a deputy assessor, or a change in a deputy assessor's legal name.

This rule is intended to implement Iowa Code sections 441.5, 441.10 and 441.11.

701—72.11(441) Special examinations. The conference board of the city or county in which a special examination is held shall reimburse the department for all expenses incurred in the administration of the examination. In determining the amount of reimbursement, the director shall take into consideration the costs of traveling to and from the examination site, meals and lodging, if any, for the monitor administering the examination, the costs of preparing and grading the examinations, and the salary of the monitor during the time expended on the examination.

This rule is intended to implement Iowa Code sections 441.5 to 441.7.

701—72.12(441) Register of eligible candidates. Following the administration and grading of an examination for assessor or deputy assessor, the director shall establish updated registers containing the names, in alphabetical order, and addresses of all persons eligible for appointment. The registers shall not contain test scores, but the scores shall be given to the city or county conference board upon request. Eligible candidates shall remain on the register for two years following the date of certification by the director after which time the person must successfully retake the examination to be placed on the register. However, assessors and deputy assessors with six years of consecutive service shall be placed on the register permanently without further testing being required. "Consecutive service" means service in which there was not more than 30 days' break in service. Assessor and deputy assessor service cannot be combined to meet the six-year consecutive service requirement.

Assessors and deputy assessors must complete the continuing education requirements provided in Iowa Code sections 441.5 and 441.10 to be reappointed to their present position or appointed to the same position in a different assessing jurisdiction. This provision does not apply to persons not presently serving as an assessor or deputy assessor. It shall be the duty of the conference board in the case of assessor appointments and the duty of the assessor in the case of deputy assessor appointments to receive written verification from the director of continuing education requirement compliance. An assessor or deputy assessor appointed as such without having complied with continuing education requirements shall be removed from office on order of the director. No continuing education requirements need be met for an assessor to be appointed a deputy assessor nor for a deputy assessor to be appointed an assessor.

This rule is intended to implement Iowa Code sections 441.5 and 441.10.

701—72.13(441) Course of study for provisional appointees. A person who possesses temporary certification and receives a provisional appointment as assessor shall within 18 months of the appointment complete a course of study prescribed and administered by the department of revenue. The course of study shall include the following: (1) attendance of at least one basic assessment school

conducted by the department of revenue; (2) field instruction by appraisal personnel of the department of revenue; (3) the actual appraisal of representative properties in each class of real estate; and (4) attendance at the annual school of instruction sponsored by the department of revenue and the Iowa State Association of Assessors. In the event a person is unable to attend the annual school of instruction due to circumstances beyond the person's control, the director may, upon the request of the person, substitute comparable instruction for the fulfillment of this requirement. At three-month intervals following the appointment of the assessor, department of revenue appraisal personnel shall complete a review of the assessor's performance and discuss the review with the assessor. If the review indicates unsatisfactory progress is being made toward developing a working knowledge of appraisal principles, the assessor shall be informed as to how the assessor's performance could be improved. Not less than 60 nor more than 90 days before the expiration of the 18-month period, the director of revenue shall inform the assessor and the conference board of the assessor's jurisdiction of the director's determination as to whether the assessor satisfactorily completed the course.

This rule is intended to implement Iowa Code section 441.5.

701—72.14(441) Examining board.

72.14(1) *Membership.* Each voting unit of the conference board shall appoint a member of the examining board. Members of the examining board shall not be members of the conference board, a body which selects a member of the conference board, or the local board of review (1960 O.A.G. 226). A person must be a resident of the assessing jurisdiction served to qualify for appointment as a member of the examining board. A member changing assessing jurisdiction residency after appointment to the board may continue to serve on the board until the member's current term of office expires.

72.14(2) *Terms of members.* Members of the examining board shall be appointed for terms of six years. In the event of death, resignation, or removal from office of a member of the examining board, the appropriate voting unit of the conference board shall appoint a successor to serve the unexpired term of the previous incumbent.

72.14(3) *Removal of member.* A member of an examining board may be removed from office only after specific charges have been filed against the member.

72.14(4) *Duties.* The examining board may, at its discretion, contact all or some of the persons on the register of candidates eligible for appointment as assessor. The examining board may conduct interviews with interested persons and may administer such further examinations as may enable the board to submit a recommendation to the conference board. In arriving at its recommendation, the examining board may set other professional standards including, but not limited to, examination scores, education, and experience.

72.14(5) *Report to conference board.* The report to the conference board required pursuant to Iowa Code section 441.6 should contain a complete description of the examining board's investigations and activities. The report may, at the discretion of the examining board, contain recommendations to the conference board.

72.14(6) *Time for action.* The examining board shall take all steps necessary to comply with the time frames set forth in Iowa Code section 441.6.

This rule is intended to implement Iowa Code sections 441.2, 441.3 and 441.6.

701—72.15(441) Appointment of assessor.

72.15(1) *Meeting the conference board.* At the time specified in Iowa Code section 441.6, the conference board shall hold a meeting and take action to appoint an assessor or request permission to hold a special examination. Within ten days of this meeting, the conference board shall notify the director of the appointment or request a special examination.

72.15(2) *Time for action.* A conference board shall adhere to the time frames specified in Iowa Code section 441.6 in appointing an assessor to fill a vacant position.

72.15(3) *Special examination.* A request for a special examination shall be made only after the conference board has made a good faith attempt to appoint an assessor from the current register of

eligible candidates. The request shall state the reason or reasons the conference board feels the director of revenue should grant permission to hold the special examination.

This rule is intended to implement Iowa Code section 441.6.

701—72.16(441) Reappointment of assessor.

72.16(1) *Time for reappointment.* A conference board must decide whether to reappoint an incumbent assessor at least 90 days before the expiration of the incumbent's term. If the incumbent is not to be reappointed, the conference board shall so notify the incumbent in writing at least 90 days before the expiration of the incumbent's term. Failure of the conference board to provide timely notification of the decision not to reappoint the assessor shall result in the assessor being reappointed.

72.16(2) *Continuing education.* A conference board shall not reappoint an incumbent assessor if the board has not received from the assessor education advisory committee certification that the incumbent assessor has satisfied all continuing education requirements.

This rule is intended to implement Iowa Code Supplement section 441.8.

701—72.17(441) Removal of assessor. An assessor may be removed from office for the reasons stated in Iowa Code section 441.9, but only after the charges have been substantiated.

This rule is intended to implement Iowa Code section 441.9.

701—72.18(421,441) Courses offered by the department of revenue.

72.18(1) *Class size.* The director may determine the maximum number of students for a particular class in order to maintain a suitable learning environment. Applications to take a course shall be accepted in the order in which they are received by the department. If the number of applications received as of a specific mail delivery results in the receipt of more applications than there are spaces for the class, those applications received in that mail delivery shall be subject to a drawing by lot to determine those which shall be accepted for the class. However, persons who are not currently serving as assessors or deputy assessors shall not be admitted to a course ahead of persons serving as assessors or deputy assessors, regardless of the date on which their applications were received.

72.18(2) *Examinations during the course.* Examination questions and answers shall not be made available to persons other than employees of the department authorized by the director to have access to such information. Persons who take the examination shall not discuss with anyone the specific questions contained in the examination, nor shall they reveal any specific examination question to another person. This shall not restrict persons who have taken a course examination from discussing the general subject matter of the examination.

72.18(3) *Materials and supplies.* All examination materials shall be furnished by the department and must be returned to the monitor prior to the students leaving the examination. During the examination, students may be permitted to use their own slide rules or electronic calculators as long as their use does not disturb other students. Students shall not be permitted to bring any other materials into the examination room, nor shall they be permitted to take any materials from the examination room except their own slide rules or electronic calculators.

72.18(4) *Personal conduct during course and examination.* To preserve the integrity of the examinations and the assessing profession, each person taking an examination shall not exhibit behavior which is disruptive to other persons taking the examination, nor shall a person cheat or attempt to cheat on an examination in any manner.

72.18(5) *Violations.* Any person who intentionally violates any of the provisions of subrule 72.18(2), 72.18(3), or 72.18(4) shall be subject to the penalties specified in this subrule. If an infraction of subrule 72.18(2), 72.18(3), or 72.18(4) occurs and is detected and confirmed during the examination, the examination of the person committing the infraction shall be confiscated by the instructor and shall not be scored. If the infraction is detected and confirmed after the examination of the person committing the infraction has been scored, the score resulting from that examination shall be reduced to a failing grade and the director shall notify the assessor education advisory committee of the action taken. If the

infraction is detected and confirmed during the course, the instructor shall expel the student from the classroom, and the student shall not be permitted to take the examination for the course.

72.18(6) *Instructors.* Course instructors shall inform all students of the provisions of subrules 72.18(2), 72.18(3), and 72.18(4). The instructors shall have the authority to enforce these rules in accordance with subrule 72.18(5).

72.18(7) *Retaking examination.* A person who receives a failing score on the examination for a course may retake the examination by submitting a request to the director within ten days of the date the director notifies the person of the examination score. The examination shall be retaken at the office of the department in Des Moines or at the site of any scheduled course examination, and shall be retaken within 30 days of the date the original examination was taken. A person who retakes an examination may not again take that particular course for credit until at least 30 days have passed from the date the examination was retaken. A special examination may be taken only once for a particular course, regardless of the number of times a student takes the course. A special examination shall be given only if the student took and failed the examination given at the end of a course taken for credit.

72.18(8) *Review of examination.* Persons who have taken a course examination may, after presenting proper identification, review their examination in the office of the department's property tax section within 60 days after the date the examination has been administered. The review shall consist only of examining the person's own answer sheet and the question book. Persons reviewing their examinations shall not be permitted to take notes or otherwise transcribe information during this review, nor shall they have access to the answers to questions contained in the examination. Persons who review their examinations shall be permitted to do so only once, and shall not be eligible to take the same examination for a period of at least 30 days following the date of the review of the examinations.

72.18(9) *Length of examination.* The director shall determine the appropriate amount of time in which persons may take each examination. Any person who arrives at the examination site after the examination has begun shall not be permitted to complete the examination after the time scheduled for completion.

This rule is intended to implement Iowa Code section 441.8.

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CHAPTER 73
PROPERTY TAX CREDIT AND RENT REIMBURSEMENT
[Prior to 12/17/86, Revenue Department[730]]

701—73.1(425) Eligible claimants. The property tax credit and rent reimbursement programs are available to claimants who: (1) were at least 23 years of age or a head of household on December 31 of the base year, (2) were not or will not be claimed as a dependent on another person's federal or state income tax return for the base year in the case of a claimant who is not disabled or at least 65 years of age, (3) did not have household income in excess of the indexed amount determined pursuant to Iowa Code section 425.23(4) during the base year, and (4) are domiciled in Iowa at the time the claim is filed or were at the time of the claimant's death.

In the case of a claim for rent reimbursement, the claimant must have occupied and rented the property during any part of the base year. In the case of a claim for property tax credit, the claimant must have occupied the property during any part of the fiscal year beginning July 1 of the base year.

If a homestead is occupied by two or more eligible claimants, each person may file a claim based upon each person's income and each person's share of the rent paid or property taxes due.

The computed credit or reimbursement shall be determined in accordance with the applicable schedule provided in Iowa Code section 425.23(1) as adjusted by the indexed amount determined in section 425.23(4).

This rule is intended to implement Iowa Code section 425.17(2) as amended by 1999 Iowa Acts, chapter 152, and section 425.23, and is effective for property tax credit and rent reimbursement claims filed on or after January 1, 2000.

701—73.2(425) Separate homesteads—husband and wife property tax credit. If a husband and wife are both qualified homeowners living in and maintaining separate and distinct homesteads and each is actually liable for and will pay the property tax for their respective homesteads, each is eligible to file an individual credit claim for property tax due.

This rule is intended to implement Iowa Code section 425.17(4).

701—73.3(425) Dual claims. A claimant changing homesteads during the base year who will make property tax payments during the fiscal year following the base year and who also made rent payments during the base year is entitled to receive both a property tax credit and rent reimbursement.

Separate claim forms for the property tax credit and the rental reimbursement shall be filed with the county treasurer and the Iowa department of revenue, respectively.

The claims are to be based on the actual property tax due and rent constituting property tax paid with a combined maximum of $1000 upon which the credit and reimbursement can be calculated.

EXAMPLE: $800 property tax due
$400 rent constituting property taxes paid

The claim form for calculating the property tax credit shall reflect the entire $800 amount.

The claim form for calculating the rent reimbursement shall reflect only the remaining $200 of the $1000 maximum allowance.

The Iowa department of revenue will issue refund warrants for rent reimbursement claims. The county treasurer will apply the property tax credits.

This rule is intended to implement Iowa Code section 425.24.

701—73.4(425) Multipurpose building. A multipurpose building is a building which is used for other purposes in addition to being used for living accommodations. If a portion of a homestead property is utilized for business purposes, the property is considered to be a multipurpose building.

The portion of the property tax due or rent constituting property tax paid attributable to the homestead only is to be used in determining the allowable credit or reimbursement. This portion is to be calculated by determining the percentage of the homestead square footage to the square footage of

the entire multipurpose structure. This percentage is then to be applied to the property tax due in the current fiscal year or rent constituting property tax paid for the base year.

This rule is intended to implement Iowa Code section 425.17(8).

701—73.5(425) Multidwelling. A multidwelling is a structure which houses more than one homestead. This includes, but is not limited to: apartment buildings, duplexes, condominiums, town houses, nursing homes and rooming houses.

A claimant owning a multidwelling whose homestead is a portion of the multidwelling is entitled to a credit for only that portion of the property tax due attributable to the homestead.

This calculation of the credit or reimbursement is to be performed the same as for a multipurpose building as described in rule 73.4(425).

This rule is intended to implement Iowa Code section 425.17(8).

701—73.6(425) Income. Income includes the amount of in-kind assistance received by the claimant for housing expenses such as federal rent subsidy payments made directly to the landlord on behalf of the claimant and energy assistance benefits received by the claimant from or through a public utility.

In determining income, net operating losses and net capital losses are not to be considered. If the comparison of gains and losses results in a net gain, such amount shall be considered income. If the comparison results in a net loss, the net loss shall be disregarded.

This rule is intended to implement Iowa Code section 425.17(7) as amended by 1993 Iowa Acts, chapter 180.

701—73.7(425) Joint tenancy. Joint tenancy for purposes of a property tax credit is the common ownership of a homestead by two or more persons either as joint tenants with right of survivorship or tenants in common.

This rule is intended to implement Iowa Code section 425.17(8).

701—73.8(425) Amended claim. An amended claim can only be filed by a claimant who has timely filed a claim for property tax credit or rent constituting property tax paid for the appropriate base year.

The amended claim must be filed within three years from October 31 of the year in which the original claim was filed.

The amended claim shall be clearly marked by the claimant with the word "AMENDED."

If upon review by the Iowa department of revenue an additional credit or reimbursement is indicated, the claimant shall be reimbursed the additional amount.

This rule is intended to implement Iowa Code section 425.27.

701—73.9(425) Simultaneous homesteads. A person who owns or rents one property and also owns or rents another property for a simultaneous period of time is limited to claiming a property tax credit or rent reimbursement on the property which is considered the person's domicile.

This rule is intended to implement Iowa Code section 425.17(4).

701—73.10(425) Confidential information. Income tax information contained on a property tax credit claim form is confidential except that the information may be conveyed by the department of revenue to county treasurers for purposes of eligibility verification for tax credit claims. Information contained on a rent reimbursement claim form is confidential except that the information may be released to an employee of the department of inspections and appeals to assist in the performance of an audit or investigation. See rule 701—6.3(17A).

This rule is intended to implement Iowa Code section 425.28 as amended by 1999 Iowa Acts, chapter 139.

701—73.11(425) Mobile, modular, and manufactured homes. An eligible claimant whose homestead is a mobile, modular, or manufactured home which the claimant owns and which was assessed as real

estate resulting in property tax due may file a claim for credit for property tax due on the home and the land on which the home is located, provided the land is owned by the claimant.

An eligible claimant whose homestead is a mobile, modular, or manufactured home subject to the annual tax as provided in Iowa Code chapter 435 may file a claim for credit for property taxes due on the land upon which the home is located provided the land is owned by the claimant. Rent paid for occupancy of a home and the space occupied by the home is subject to reimbursement regardless of how the home is taxed.

This rule is intended to implement Iowa Code subsection 425.17(4).

701—73.12(425) Totally disabled. A person who is totally disabled must be unable to engage in any substantial gainful employment by reason of any medically determinable physical or mental impairment. In addition, the impairment must have lasted or is reasonably expected to last for a continuous period of 12 months or is expected to result in death. This disabled condition must be the determining factor in the person's inability to engage in gainful employment. A claimant is considered totally disabled only if the physical or mental impairment or impairments are of such severity that the claimant is not only unable to do work previously performed but cannot, considering the claimant's age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which the claimant lives, or whether a specific job vacancy exists or whether the claimant would be hired if the claimant applied for work. See 42 U.S.C. §423. Examples of physical conditions which could possibly constitute total disability would include, but are not limited to: loss of major function of one or both legs or arms; progressive diseases which have resulted in the loss of one or both legs or arms or which have caused them to become useless; severe arthritis; diseases of the heart, lungs or blood vessels which have resulted in serious loss of heart or lung reserve; diseases of the digestive system which have resulted in severe malnutrition, weakness and anemia prohibiting gainful employment; damage to the brain or brain abnormality which has resulted in severe loss of judgment, intellect, orientation or memory; or, paralysis or diseases of the nervous system which prohibit coordination or major functioning of the body so as to prevent gainful employment.

For purposes of this rule, a person shall not be considered unable to engage in substantial gainful employment unless the person has attained the age of 18 on or before December 31 of the base year.

This rule is intended to implement Iowa Code subsection 425.17(11).

701—73.13(425) Nursing homes. A claimant whose homestead is a nursing home is eligible to file a reimbursement claim for rent constituting property tax paid unless the person is eligible for a property tax credit on an owned homestead.

This rule is intended to implement Iowa Code section 425.17(4).

701—73.14(425) Household. Household includes the claimant and the claimant's spouse if living with the claimant at any time during the base year. "Living with" does not include a temporary visit. Only one claimant per household is entitled to a credit or reimbursement.

This rule is intended to implement Iowa Code section 425.17(5) as amended by 1999 Iowa Acts, chapter 152, and section 425.22.

701—73.15(425) Homestead. A person who owns a homestead but is confined to a care facility shall be considered as occupying the owned homestead provided the person does not lease or otherwise receive profits from others for the use of the homestead. The person shall be eligible for a property tax credit but shall not be eligible for a rent reimbursement.

This rule is intended to implement Iowa Code subsection 425.17(4).

701—73.16(425) Household income. Household income includes income of the claimant and the claimant's spouse and actual monetary payments made to the claimant by any other person living with the claimant. Household income does not include Social Security benefits received by the claimant's child and given to the claimant.

Monetary payments do not include goods and services provided to the claimant by a person living with the claimant.

This rule is intended to implement Iowa Code section 425.17(6) as amended by 1994 Iowa Acts, chapter 1165, and section 425.17(7).

701—73.17(425) Timely filing of claims. If a timely mailed property tax credit or rent reimbursement claim is not received by the county treasurer or the department of revenue or is received after the June 1 filing deadline, the claim will be considered to have been timely filed if the claimant complies with the provisions of Iowa Code section 622.105. The county treasurer may extend the time for filing a claim for property tax credit through September 30 of the same year. The director may also extend the filing deadline for property tax credit and rent reimbursement claims through December 31 of the following year. Late property tax credit claims will be reimbursed by the director directly to the claimant upon proof of tax payment.

In the case of a claim for property tax credit, the claimant must own and occupy the homestead at the time the claim for credit is filed or if a late claim, own and occupy the homestead on June 1 of the claim year.

This rule is intended to implement Iowa Code section 425.20 as amended by 1996 Iowa Acts, chapter 1167.

701—73.18(425) Separate homestead—husband and wife rent reimbursements. If a husband and wife are both qualified claimants renting separate and distinct homesteads, and rent is paid by each, each is eligible to file an individual reimbursement claim for rent constituting property tax paid.

This rule is intended to implement Iowa Code subsection 425.17(4).

701—73.19(425) Gross rent/rent constituting property taxes paid. Gross rent means the total amount of rent paid for use of the homestead by the claimant and rent constituting property taxes paid means 23 percent of the gross rent.

This rule is intended to implement Iowa Code sections 425.17(3) and 425.17(9) as amended by 1994 Iowa Acts, chapter 1125.

701—73.20(425) Leased land. An individual who owns a dwelling located on land owned by another may claim a credit of property taxes due on the dwelling and a reimbursement of rental payments made for the use of the land if the land has been assessed for taxation.

This rule is intended to implement Iowa Code subsection 425.17(4).

701—73.21(425) Property: taxable status. In order to be eligible to file a rent reimbursement claim, the property upon which the claimant resided during the base year must have been in a taxable status during the base year. If the property was taxable for only part of the base year, the rent reimbursement must be prorated accordingly. (OP.ST. BD. Tax Rev. 187). However, this restriction does not apply to property that became tax-exempt on or after July 1, 1986, provided the claimant received a reimbursement of rent constituting property taxes paid on the property when it was in a taxable status and continues to reside in the same property.

This rule is intended to implement Iowa Code subsection 425.17(4).

701—73.22(425) Special assessments. The claimant may include as a portion of the taxes due during the fiscal year next following the base year an amount equal to the unpaid special assessment installment due, plus interest, during the fiscal year next following the base year.

This rule is intended to implement Iowa Code subsection 425.17(10).

701—73.23(425) Suspended, delinquent, or canceled taxes. No property tax credit shall be allowed to any person whose taxes have been canceled pursuant to Iowa Code section 427.8. A property tax credit shall be allowed to an eligible claimant whose taxes have been suspended pursuant to Iowa Code sections 427.8 and 427.9.

A property tax credit shall be allowed to an eligible claimant even though the claimant's taxes for a previous fiscal year are delinquent. The claimant may receive a reimbursement for delinquent taxes paid provided the taxes are paid by December 31 following the fiscal year in which the taxes became delinquent.

This rule is intended to implement Iowa Code section 425.17(8).

701—73.24(425) Income: spouse. The income of a spouse does not have to be reported on the claimant's return unless the spouse lived with the claimant at the property upon which the property tax credit or rent reimbursement is claimed. If the spouse lived with the claimant for only a portion of the base year, only that portion of the spouse's income which was received while living with the claimant must be reported as income.

This rule is intended to implement Iowa Code subsection 425.17(6).

701—73.25(425) Common law marriage. A common law marriage is a social relationship between a man and a woman that meets all the necessary requisites of a marriage except that it was not solemnized, performed or witnessed by an official authorized by law to perform marriages. The necessary elements of a common law marriage are: (a) a present intent of both parties freely given to become married, (b) a public declaration by the parties or a holding out to the public that they are husband and wife, (c) continuous cohabitation together as husband and wife (this means consummation of the marriage), and (d) both parties must be capable of entering into the marriage relationship. No special time limit is necessary to establish a common law marriage.

This rule is intended to implement Iowa Code section 425.17.

701—73.26 Rescinded, effective October 2, 1985.

701—73.27(425) Special assessment credit.

73.27(1) *Property taxes due.* Any person whose special assessment is paid by the department of revenue pursuant to Iowa Code subsection 425.23(3) cannot include the special assessment as property taxes due under Iowa Code subsection 425.17(10) for purposes of determining a property tax credit.

73.27(2) *Special assessments eligible for credit.* As used in Iowa Code section 425.23(3), the term "special assessment" means special assessments made pursuant to Iowa Code sections 384.37 to 384.79.

73.27(3) *Special assessment credit qualifications.* No special assessment credit claim shall be allowed pursuant to Iowa Code section 425.23(3) unless at the time the application for credit is filed the property upon which the levy is made includes a homestead dwelling as defined in Iowa Code section 425.17(4) and the claimant's household income does not exceed the indexed amount determined pursuant to Iowa Code section 425.23(4).

73.27(4) *Special assessment installment due in current fiscal year.* The amount of a special assessment credit claim to be reimbursed by the Iowa department of revenue pursuant to Iowa Code section 425.23 is limited to the amount of the installment payable during the current fiscal year for persons described in 1993 Iowa Acts, chapter 180, section 4, subsection 2, paragraph *"a,"* or one-half of that amount for persons described in 1993 Iowa Acts, chapter 180, section 4, subsection 2, paragraph *"b."*

73.27(5) *Audit by department of revenue.* The director of revenue may audit the books and records of the county treasurer to determine if the amounts certified by the county treasurer to the director of revenue pursuant to Iowa Code section 425.23(3) are true and correct. The director of revenue may also initiate investigations or assist the county treasurer's investigations into eligibility of a claimant for the special assessment credit in accordance with Iowa Code section 425.27. Upon investigation, the director of revenue may order the county treasurer to reimburse the state of Iowa any amounts that were erroneously paid to the county treasurer or issue a reimbursement directly to the claimant if it is

determined the claimant did not receive the benefits to which entitled pursuant to Iowa Code section 425.23(3).

This rule is intended to implement Iowa Code section 425.23(3) as amended by 1998 Iowa Acts, House File 2513, and is effective for special assessment credit claims filed on or after January 1, 1999.

701—73.28(425) Credit applied. The county treasurer shall apply the property tax credit equally to the claimant's first and second half tax liabilities.

This rule is intended to implement Iowa Code sections 425.16 to 425.40.

701—73.29(425) Deceased claimant. A claim for property tax credit or rent reimbursement may be filed on behalf of a deceased person by the person's spouse, attorney, guardian or the executor or administrator of the person's estate.

This rule is intended to implement Iowa Code section 425.17(2) as amended by 1999 Iowa Acts, chapter 152, and section 425.18.

701—73.30(425) Audit of claim.

73.30(1) *Authority.* The director of revenue may audit the records of the county treasurer to determine the accuracy of claims filed for property tax credits. The director may also investigate the eligibility of a claimant for a property tax credit or rent reimbursement.

73.30(2) *Recomputed rent reimbursement claim.* If it is determined a computed rent reimbursement is in error, the director shall collect any overpayment from the claimant or reimburse the claimant for any underpayment. If a claimant fails to reimburse the department for an overpayment, the amount of overpayment shall be deducted from any future rent reimbursement to which the claimant is entitled.

73.30(3) *Recomputed property tax credit claim.* If it is determined a computed property tax credit has been overpaid, the director shall notify the claimant and county treasurer of the overpayment. The county treasurer shall collect the overpayment from the claimant as if it were an unpaid property tax and reimburse the director for the amount of overpayment. However, if the property upon which the credit was allowed is no longer owned by the claimant, the director shall collect the amount of overpayment directly from the claimant. If it is determined a computed property tax credit has been underpaid, the director shall reimburse the claimant directly for the amount of underpayment.

This rule is intended to implement Iowa Code section 425.27.

701—73.31(425) Extension of time for filing a claim. The granting of an extension of time for filing a claim for reimbursement or credit does not extend the time within which or the dates on or by which eligibility requirements must be satisfied.

This rule is intended to implement Iowa Code section 425.20.

701—73.32(425) Annual adjustment factor. Beginning with claims filed in 2000, the income levels used for determining the allowable percent of property tax credit or rent reimbursement or the amount of the mobile home reduced tax rate shall be adjusted each year to reflect the inflation factor as computed pursuant to Iowa Code section 422.4.

This rule is intended to implement Iowa Code sections 425.23(4) and 435.22(2) as amended by 1998 Iowa Acts, House File 2513.

701—73.33(425) Proration of claims. If the director determines that the amount of funding provided pursuant to Iowa Code section 425.39 will be insufficient to pay all property tax credit and rent reimbursement claims filed, the director shall estimate the percentage at which the claims will be paid and shall prorate the payment of each property tax credit and rent reimbursement claim by the same estimated percentage. The county treasurer shall, pursuant to Iowa Code section 25B.7, be required to extend to the claimant only that portion of the credit estimated by the department to be funded by the state appropriation.

This rule is intended to implement Iowa Code sections 25B.7 and 425.39.

701—73.34(425) Unreasonable hardship. In order to avoid any unreasonable hardship to a claimant, the director may review the facts and circumstances of the claim as set forth by the claimant. The director may investigate all factors related to the specific case as deemed appropriate by the director. If the director is satisfied that the claim qualifies as an undue hardship for the claimant, the claim will be approved by the director.

This rule is intended to implement Iowa Code section 425.37.

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CHAPTER 74
MOBILE, MODULAR, AND MANUFACTURED HOME TAX
[Prior to 12/17/86, Revenue Department[730]]

701—74.1(435) Definitions.

1. *"Mobile home"* means any vehicle without motive power used or so manufactured or constructed as to permit its being used as a conveyance upon the public streets and highways and so designed, constructed, or reconstructed as will permit the vehicle to be used as a place for human habitation by one or more persons; but shall also include any such vehicle with motive power not registered as a motor vehicle in Iowa. A "mobile home" is not built to a mandatory building code, contains no state or federal seals, and was built before June 15, 1976.

2. *"Manufactured home"* is a factory-built structure built under authority of 42 U.S.C. § 5403, is required by federal law to display a seal from the United States Department of Housing and Urban Development, and was constructed on or after June 15, 1976.

3. *"Modular home"* means a factory-built structure which is manufactured to be used as a place of human habitation, is constructed to comply with the state of Iowa building code for modular factory-built structures, and must display the seal issued by the state building code commissioner.

4. *"Mobile home park"* means any land upon which three or more mobile or manufactured homes, or a combination of such homes, are placed on developed spaces and operated as a for-profit enterprise with water, sewer or septic, and electrical services available. It does not include homes where the owner of the land is providing temporary housing for the owner's employees or students.

5. *"Manufactured home community"* means any site, lot, field, or tract of land under common ownership upon which ten or more occupied manufactured homes are harbored, either free of charge or for revenue purposes, and shall include any building, structure, or enclosure used or intended for use as part of the equipment of the community. The term shall not be construed to include homes, buildings, or other structures temporarily maintained by any individual, educational institution, or company on their own premises and used exclusively to house their own labor or students. A "manufactured home community" means the same as a "land-leased community" defined in Iowa Code sections 335.30A and 414.28A.

Wherever used in this chapter, "home" means a mobile home, a manufactured home, or a modular home unless specific reference is made to a particular type of home.

This rule is intended to implement Iowa Code section 435.1 as amended by 2001 Iowa Acts, House File 656.

701—74.2(435) Movement of home to another county. If one or both installments of the tax for the current fiscal year have been paid and subsequently the home is moved to another county, the tax paid shall remain in the county in which originally collected. No reimbursement shall be made either to the owner of the home or to the county to which the home is moved. If only the first installment has been paid and the home is moved prior to January 1, the second installment shall be made to the county to which the home is moved.

This rule is intended to implement Iowa Code section 435.24.

701—74.3(435) Sale of home. If the owner of a home has paid one or both installments of the tax for the current fiscal year and subsequently sells the home, no reimbursement shall be made to the seller for any portion of the tax paid. If only the first installment has been paid and the home is sold prior to January 1, the purchaser is responsible for the second installment.

This rule is intended to implement Iowa Code section 435.24.

701—74.4(435) Reduced tax rate.

74.4(1) *Claimant.* The reduced rate of tax for Iowa residents who were at least 23 years of age on December 31 of the base year shall be computed as provided in Iowa Code subsection 435.22(2). The claimant's name must appear on the title to the home.

74.4(2) *Income.* In determining eligibility for the reduced tax rate, the claimant's income and that of the claimant's spouse shall be the income received during the base year, or the income tax accounting period ending during the base year, and must be less than the indexed amount determined pursuant to Iowa Code section 435.22(2). The base year is the calendar year immediately preceding the year in which the claim is filed.

74.4(3) *Claims.* Claims for the reduced tax rate must be filed with the county treasurer on or before June 1 immediately preceding the fiscal year during which the taxes are due. The county treasurer may extend the time for filing a claim for reduced tax rate through September 30 of the same year. The director of revenue may also extend the time for filing a claim through December 31 if good cause exists. Late reduced tax rate claims will be reimbursed by the director directly to the claimant upon proof of tax payment. The claimant must own and occupy the home at the time the claim for credit is filed or, if deceased, at the time of the claimant's death or, if a late claim, on June 1 of the claim year. The claim forms shall be provided by the department of revenue.

74.4(4) *Reports to department of revenue.* On or before November 15 of each year, the county treasurer of each county shall report to the department of revenue the amount of taxes not to be collected for the current fiscal year as a result of the reduced tax rate provided in Iowa Code subsection 435.22(2). All reports shall be made on forms provided by the department of revenue.

74.4(5) *Payment of claims.* On December 15 of each year the department of revenue shall remit to each county treasurer an amount equal to the taxes not collected during the current fiscal year as a result of the granting of the reduced tax rate.

This rule is intended to implement Iowa Code section 435.22 as amended by 1999 Iowa Acts, chapter 152, and is effective for reduced tax rate claims filed on or after January 1, 2000.

701—74.5(435) Taxation—real estate. Homes located outside of mobile home parks or manufactured home communities must be placed on a permanent foundation and are subject to assessment and taxation as real estate. The homes are eligible for all property tax credits and exemptions applicable to other real estate. The assessor shall collect the title to a home only when a security interest is noted on the title and the secured party is given a mortgage on the land on which the home is located. Homes located outside mobile home parks or manufactured home communities as of July 1, 1994, are not subject to the permanent foundation requirements unless the home is relocated.

This rule is intended to implement Iowa Code section 435.26.

701—74.6(435) Taxation—square footage. Homes located within mobile home parks or manufactured home communities are subject to a square footage tax at the rates specified in Iowa Code section 435.22. It shall be the responsibility of the owner to provide the county treasurer with appropriate documentation to verify eligibility for the reduced tax due to the home's age. Modular homes placed in mobile home parks or manufactured home communities that were not in existence on or before January 1, 1998, shall be subject to assessment and taxation as real estate.

The mobile home park or manufactured home community owner or manager shall make an annual report with the county treasurer by June 1 listing the owner and address of each home sited in the park or community. An additional report shall be filed by December 1 if any homes are moved in or out of the park or community or there are any changes in home ownership.

This rule is intended to implement Iowa Code sections 435.22 and 435.24(3).

701—74.7(435) Audit by department of revenue. The director of revenue may audit the books and records of the county treasurer to determine if the amounts certified by the county treasurer to the director of revenue as tax not collected due to the reduced tax rate are true and correct. Upon investigation, the director of revenue may order the county treasurer to reimburse the state of Iowa any amounts that were erroneously paid to the county treasurer. The director of revenue may also require that additional payments be made to the county treasurer by the owner of a home if investigation reveals that the county treasurer did not receive the full amounts due in accordance with Iowa Code section 435.22.

The director of revenue may initiate investigations or assist the county treasurer's investigations into eligibility of a claimant for the reduced tax rate in accordance with Iowa Code section 435.22. Upon investigation, the director of revenue may order a claimant to reimburse the state of Iowa any amount erroneously claimed as a reduced tax rate which was reimbursed by the department of revenue to the county treasurer in accordance with Iowa Code section 435.22. The director of revenue may also issue a reimbursement directly to the claimant if it is determined the claimant did not receive the full benefits to which entitled pursuant to Iowa Code section 435.22.

This rule is intended to implement Iowa Code section 435.22.

701—74.8(435) Collection of tax.

74.8(1) *Partial payment of tax.* Partial payments of taxes may be allowed at the discretion of the county treasurer. If the treasurer elects to permit partial payments, the authorization shall apply to all taxpayers within the county. If the partial payments made are insufficient to fully satisfy an installment due by the delinquency date, the unpaid portion of the installment shall draw interest as provided in Iowa Code section 445.39. Current year taxes may be paid at any time regardless of any prior year delinquent taxes. The minimum payment for delinquent taxes must be equal to or exceed the interest, fees, and costs of the installment being paid.

74.8(2) *When delinquent.* The date on which unpaid taxes become delinquent is to be determined as follows:

a. If the home is put to use between January 1 and March 31, the prorated tax for the period from the date the home is put to use through June 30 becomes delinquent on April 1.

b. If the home is put to use between April 1 and June 30, the prorated tax for the period from the date the home is put to use through June 30 becomes delinquent on October 1.

c. If the home is put to use between July 1 and September 30, the prorated tax for the period from the date the home is put to use through December 31 becomes delinquent on October 1.

d. If the home is put to use between October 1 and December 31, the prorated tax for the period from the date the home is put to use through December 31 becomes delinquent on April 1 of the following calendar year.

e. For purposes of this rule, a home is "put to use" upon its acquisition from a dealer or its being brought into Iowa for immediate use by a person who is not engaged in the business of manufacturing, sale, or transportation of homes.

74.8(3) *Collection of delinquent tax.* Delinquent taxes shall be collected by offering the home at tax sale in accordance with Iowa Code chapter 446.

This rule is intended to implement Iowa Code Supplement section 435.24 and Iowa Code sections 435.25 and 445.37.

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CHAPTER 75
PROPERTY TAX ADMINISTRATION

701—75.1(441) Tax year. The assessment date is January 1 for taxes for the fiscal year which commences 6 months after the assessment date and which become delinquent during the fiscal year commencing 18 months after the assessment date. For example, taxes payable in fiscal year 1991-1992 are for fiscal year 1990-1991 and are based on the January 1, 1990, assessment.

This rule is intended to implement Iowa Code section 441.46.

701—75.2(445) Partial payment of tax. Partial payments of taxes may be allowed at the discretion of the county treasurer. If the treasurer elects to permit partial payments, the authorization shall apply to all taxpayers within the county. If the partial payments made are insufficient to fully satisfy an installment due by the delinquency date, the unpaid portion of the installment shall draw interest at the rate specified in Iowa Code section 445.39. Current year taxes may be paid at any time regardless of any outstanding prior year delinquent tax. The minimum payment for delinquent taxes must be equal to or exceed the interest, fees, and costs of the installment being paid.

This rule is intended to implement Iowa Code Supplement section 445.36A.

701—75.3(445) When delinquent. The first half installment of taxes shall become delinquent if not received by the county treasurer on or before the last business day preceding October 1, and the second half installment shall become delinquent if not received by the county treasurer on or before the last business day preceding April 1. If mailed, the payment envelope must bear a postmark date preceding October 1 or April 1 to avoid delinquency. However, in those instances when the last day of September or March is a Saturday or Sunday, the taxes become delinquent on the second business day of October or April, whichever is applicable. If paid electronically, the payment must be initiated by midnight on or before the last day of the month preceding the delinquent date to avoid interest on the taxes. Delinquent taxes shall draw interest at the rate specified in Iowa Code section 445.39.

This rule is intended to implement Iowa Code Supplement section 445.37 as amended by 2002 Iowa Acts, House File 2246.

701—75.4(446) Payment of subsequent year taxes by purchaser. Taxes for a subsequent year may not be paid by the purchaser of the property sold at tax sale until 14 days following the date from which an installment becomes delinquent.

This rule is intended to implement Iowa Code section 446.32 as amended by 1993 Iowa Acts, chapter 73.

701—75.5(428,433,434,437,437A,438) Central assessment confidentiality. The release of information contained in any reports filed under Iowa Code chapters 428, 433, 434, 437, 437A, and 438, or obtained by the department in the administration of those chapters, is governed by the general provisions of Iowa Code chapter 22 since there are no specific provisions relating to confidential information contained in those chapters. Any request for information must be made pursuant to rule 701—6.2(17A). See rule 701—6.3(17A).

Any request for information pertaining to a taxpayer's business affairs, operations, source of income, profits, losses, or expenditures must be made in writing to the director. The taxpayer to whom the information relates will be notified of the request for information and will be allowed 20 days to substantiate any claim of confidentiality under Iowa Code chapter 22 or any other statute such as Iowa Code section 422.72. If substantiated, the request will be denied; otherwise, the information will be released to the requesting party. This rule will not prevent the exchange of information between state and federal agencies.

This rule is intended to implement Iowa Code chapters 428, 433, 434, 437, 437A, and 438.

701—75.6(446) Tax sale. The county treasurer shall hold the annual tax sale on the third Monday in June. If, for good cause, the treasurer is unable to hold the tax sale on that date, the treasurer may designate a different date in June for the sale.

This rule is intended to implement Iowa Code section 446.7 as amended by 1999 Iowa Acts, chapter 4, section 1.

701—75.7(445) Refund of tax. The board of supervisors shall order the county treasurer to refund taxes found to have been erroneously or illegally collected. A claim for refund must be presented to the board within two years of the date the tax was due or if appealed within two years of the final decision.

This rule is intended to implement Iowa Code section 445.60 as amended by 1999 Iowa Acts, chapter 174, section 6.

701—75.8(614) Delinquent property taxes. A county is immune from the statute of limitations when collecting delinquent property taxes levied on or after April 1, 1992 (Fennelly v. A-1 Machine and Tool Co., No. 73/04-1232—10/6/06).

This rule is intended to implement Iowa Code section 614.1 as amended by 2007 Iowa Acts, Senate File 450.

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CHAPTER 76
DETERMINATION OF VALUE OF RAILROAD COMPANIES
[Prior to 12/17/86, Revenue Department[730]]

701—76.1(434) Definitions of terms.

76.1(1) The term *"railroad"* shall mean and include all individuals or corporations engaged in the operation of a railway in this state and subject to valuation pursuant to Iowa Code chapter 434.

76.1(2) The term *"unit value"* or *"unit market value"* shall mean the market value arrived at by using the appraisal method of valuing an entire operating property, considered as a whole and capable of performing the function for which it was created, such as (by way of illustration and not limitation) transporting freight over rail.

76.1(3) The term *"operating property"* shall mean all property owned by or leased to a railroad company, not otherwise taxed separately or made nontaxable by law, which is necessary to and without which the railroad could not perform the activities for which the railroad is formed, such as (by way of illustration and not limitation) transporting freight over rail. With regard to property whose identity as "operating" or "nonoperating" property is not clearly ascertainable, the property shall be considered operating property if the railroad could not reasonably be expected to perform the referenced activities in the absence of such property.

76.1(4) The term *"nonoperating property"* shall mean all property owned by a railroad not defined by subrule 76.1(3) as "operating property."

76.1(5) The term *"comparable sales"* shall mean actual sales transactions, between willing buyers and willing sellers, neither being under any compulsion to buy or sell, of property which is similar in purpose, function and design to the property to which the comparison is being made. Where the determination of a unit value is being made, the sale of a portion of a unit which is nominally similar in purpose and function to the unit being valued shall not be considered a comparable sale, absent proof by evidence other than the terms of the sale itself, that the sales price was based on some unit of measurement which is common both to the property sold and the property being valued and which is not affected by the fact that less than the entire unit is being sold, such as (by way of illustration and not limitation) (1) the price per mile of track and (2) the price per square foot of the property.

76.1(6) The term *"income approach to unit value"* shall mean the estimate of unit market value obtained by dividing an appropriate income stream by an appropriate and compatible discount rate.

76.1(7) The term *"stock and debt approach to unit value"* shall mean the estimate of unit market value determined by combining the estimate of market value of the stock, debt, current liabilities, other liabilities, including capital leases, and deferred credits associated with the operating property of a railroad company.

76.1(8) The term *"cost approach to unit value"* shall mean the estimate of value determined by combining the original cost less a depreciation allowance for the operating property of a railroad company.

76.1(9) The term *"respondent"* shall include the railroad company whose property is to be valued.

76.1(10) The term *"leased assets"* shall mean capital leases.

76.1(11) The term *"original cost"* shall mean the actual cost of the property to its present owner, not the first cost at the time it was originally constructed and placed in service.

This rule is intended to implement Iowa Code chapter 434.

701—76.2(434) Filing of annual reports.

76.2(1) Annual reports required to be filed by the reporting railroad company shall be on forms prescribed and supplied by the department. It shall be the responsibility of the railroad company to obtain the forms supplied by the department.

76.2(2) Additional schedules or attachments submitted by respondent shall be identified as to subject matter, shall be typed on paper of similar size to that used in the annual report, and all data contained in the schedules or attachments shall be adequately explained and documented as to source. When such additional schedules or attachments are submitted, they shall be considered part of the annual report.

76.2(3) The director may require the filing of additional information if deemed necessary. The request for additional information shall be answered completely and in accordance with instructions therein specified. Additional information required shall be considered part of the annual report.

This rule is intended to implement Iowa Code chapter 434.

701—76.3(434) Comparable sales. Sale prices of comparable property in normal transactions shall be taken into consideration in arriving at its market value. In the event comparable sales are not available, the market value of operating property shall be determined by utilizing the three recognized unit approaches to value (i.e., stock and debt approach, income capitalization approach and the cost approach).

This rule is intended to implement Iowa Code section 434.15.

701—76.4(434) Stock and debt approach to unit value.

76.4(1) The stock and debt approach to unit value estimates the market value of the operating property by combining the market values of the common stock, preferred stock, debt, current liabilities, other liabilities, leases, and deferred credits associated with the operating property of the railroad company, on the basis that the market value of these items may be used as a surrogate for the market value of the operating property itself.

76.4(2) The market value of the long-term debt associated with the operating property shall be calculated by first determining a ratio, based on book values, whose numerator shall be the operating property and whose denominator shall be the total property of the railroad company. This ratio shall then be multiplied times the gross market value of the long-term debt and the result obtained shall be the market value of the long-term debt associated with the operating property.

The market value of publicly traded debt shall be determined by utilizing an average of the monthly high and low value of the debt for the 12 months preceding the valuation date. The values to be utilized shall be obtained by reference to any acceptable reporter of the market on which the securities are traded. If all or some of the securities are not publicly traded, the value of the securities shall be determined by appropriate comparable securities. The comparable securities shall be publicly traded and shall have a similar maturity date and coupon rate, as well as risk indicators similar to the untraded security. In each instance, the railroad company shall provide the department a statement of the market value of all securities and an explanation of how that market value was derived, including the identity of any comparable securities utilized. In the event that any utility is unable to utilize the foregoing rule to value its securities, it may provide the department with its own determination of the fair market value of its untraded securities together with a complete explanation of why the foregoing rule was not used and a detailed explanation of the method used.

76.4(3) The market value of the preferred stock associated with the operating property shall be calculated by first determining a ratio, based on book values, whose numerator shall be the operating property and whose denominator shall be the total property of the railroad company. This ratio shall then be multiplied times the gross market value of the preferred stock and the result obtained shall be the market value of the preferred stock associated with the operating property.

The market value of publicly traded shares of preferred stock shall be determined by utilizing an average of the monthly high and low value of the preferred stock for the 12 months preceding the valuation date. The values to be utilized shall be obtained by reference to any acceptable reporter of the market on which the preferred stock is traded. If all or some series of the preferred stock are not publicly traded, the value of such preferred stock shall be determined by appropriate comparable securities. The comparable securities shall be publicly traded and shall have the same or a similar dividend rate, as well as risk indicators similar to the untraded preferred stock. In each instance, the railroad company shall provide to the department a statement of the market value of its preferred stock and an explanation of how that market value was derived, including the identity of any comparable securities utilized. In the event that any railroad company is unable to utilize the foregoing rule to value its securities, it may provide the department with its own determination of the fair market value of its untraded securities together with a

complete explanation of why the foregoing rule was not used and a detailed explanation of the method used.

76.4(4) The market value of the common equity of a railroad company associated with the company's operating property shall be determined by capitalizing the income available to the common equity holders from the operating property, by an appropriate and compatible common equity return rate, all of which shall be determined as follows:

a. The calculation of the income to be capitalized shall begin with the railroad company's net income after taxes but before interest charges and preferred dividends for the 12-month period preceding the valuation date. The net income after taxes, but before interest charges and preferred dividends, shall be determined from the railroad company's regulatory report, or if no regulatory report is filed, from the audited financial statements of the railroad company. In the event the railroad company has no income or has a negative income, an alternative method shall be used to determine the market value of the common equity.

b. The income determined in 76.4(4)*"a"* shall be adjusted by deducting any net income included therein received from nonoperating property and, conversely, the referenced income shall be increased to account for any net loss created by any nonoperating property.

c. The income determined in 76.4(4)*"a"* shall be further reduced by that portion of the preferred dividends serviced by the income generated by the operating property, which shall be calculated by multiplying the total preferred dividend requirement by the ratio determined in 76.4(3).

d. The income determined in 76.4(4)*"a"* shall be further reduced by that portion of the debt service provided by the income generated by the operating property, which shall be calculated by multiplying the total debt service by the ratio determined in 76.4(2).

e. If there are any other interest payments required, a determination shall be made as to whether the underlying obligation was used to purchase operating or nonoperating assets. If no direct determination can be made, the interest payment shall be allocated in the same fashion as the debt service and preferred dividends. If the underlying obligation can be shown to be associated particularly, or in some specific proportion, to operating or nonoperating property, the interest payment shall be allocated either entirely or in such proportion to operating or nonoperating property. It shall be the obligation of the railroad company, in its reports to the department, to identify and detail any interest payments which are particularly associated with operating or nonoperating property, and if the railroad company fails to do so, the department may determine that all such payments may be allocated between operating and nonoperating property in the same ratio as is the debt service and preferred stock dividends (see subrules 76.4(2) and 76.4(3)).

f. Any extraordinary item affecting the income determined herein shall be eliminated in the calculation of the income shown under this rule.

g. The equity rate of return for the railroad company shall be determined by the use of the capital asset pricing model although where appropriate discounted cashflow models may be utilized as an alternative. Only in circumstances where these models are not able to be utilized will reliance be placed on a risk premium model or upon an earnings-price ratio, or other similar model, for determining the expected market rate of return on equity.

h. The income attributable to operating property available to the common equity holder as determined in 76.4(4)*"a"* to *"f"* shall then be divided by the equity rate as determined in 76.4(4)*"g,"* and the result shall be the market value of the common equity associated with the operating property.

76.4(5) In the event the railroad company has entered into capital leases of operating property, the market value of the property leased shall be determined by calculating the net present value of the leases or net book value of the leases. The net present value shall be accomplished by discounting the future lease payments for each lease. The following is offered as an illustration of the calculation of such market value:

Length of Lease	Annual Lease Payments
1. Lease (a) 5 years	$1,500,000
2. Lease (b) 7 years	$ 800,000

3. Lease (c) 3 years $ 120,000

Net present value of leases (assuming 8 percent rate)

Lease (a) = $1{,}500{,}000 \div (1.08)^1 + 1{,}500{,}000 \div (1.08)^2 \ldots 1{,}500{,}000 \div (1.08)^5$

Lease (b) = $800{,}000 \div (1.08)^1 + 800{,}000 \div (1.08)^2 \ldots 800{,}000 \div (1.08)^7$

Lease (c) = $120{,}000 \div (1.08)^1 + 120{,}000 \div (1.08)^2 \ldots 120{,}000 \div (1.08)^3$

Net Present Value of Lease (a)	=	$ 5,989,065
Net Present Value of Lease (b)	=	$ 4,165,096
Net Present Value of Lease (c)	=	$ 309,251
Total Lease Values		$10,463,412

The discount rate shall be equal to the railroad company's overall market debt rate of return.

76.4(6) In the event the railroad company has other sources of capital including, but not limited to, other liabilities, capital leases, and accumulated investment tax credits which cannot be identified as having been utilized to purchase specific assets, the market value of the sources of capital shall be allocated between operating and nonoperating assets in the same manner as long-term debt or preferred stock. Current liabilities and accumulated deferred income taxes are not to be included in this calculation. The book value of accumulated deferred income taxes should be deducted from the market value of the stock and debt approach before making this calculation. Likewise, current liabilities should be deducted from current assets and the resulting figure, if positive, should be added to the market value of the stock and debt approach and, if negative, should be deducted. The resulting figure, "net working capital," shall be allocated in the same manner as long-term debt or preferred stock (see subrules 76.4(2) and 76.4(3)). If any source of capital was created specifically for the purchase of property which can be identified as operating property or nonoperating property, the railroad company must identify the sources of capital in its annual report to the department, together with the appropriate evidence. If the railroad company fails to provide the information, the department may determine that the sources of capital may be allocated in the same manner as long-term debt or preferred stock (see subrules 76.4(2) and 76.4(3)). The market value of any source of capital, in the absence of evidence to the contrary submitted by the railroad with its annual report, shall be the book value.

76.4(7) The value determined by summing the portions of the enumerated sources of capital associated with the operating property of the railroad company provided in subrules 76.4(2) to 76.4(6) shall be the unit value of the operating properties determined by the stock and debt approach to unit value.

This rule is intended to implement Iowa Code section 434.15.

701—76.5(434) Income capitalization approach to unit value.

76.5(1) The income capitalization approach to unit value estimates the market value of the operating property by dividing the income stream generated by the operating assets by a market-derived capitalization rate based on the costs of the various sources of capital utilized or available for use to purchase the assets generating the income stream. The net railway operating income to be capitalized shall be a weighted average net railway operating income. The weighted average net railway operating income shall consist of an average of the three 12-month periods immediately preceding the valuation date. Each of the three preceding 12-month periods shall be weighted by multiplying the first preceding period by 60 percent, the second preceding period by 30 percent, and the third preceding period by 10 percent. There shall be no adjustment for the company's current-year deferred income taxes to this income stream.

The director may also utilize a "free cash flow model" in calculating the railway operating income to be capitalized. The "free cash flow model" shall consist of an average of the five 12-month periods immediately preceding the valuation date. Each of the five preceding 12-month periods shall be given

equal weighting in the calculation of the five-year average railway operating income to be capitalized. Each year the net railway operating income shall be adjusted by adding the current-year deferred income taxes associated with maintenance expenditures, adding the current-year depreciation expense, and subtracting the current-year capital expenditures necessary to maintain the plant.

The director may give consideration to both calculations of operating income as described in this subrule to determine the railway operating income to be capitalized. The director may also consider, in both calculations, adjustments for extraordinary, unusual, and infrequent items. These adjustments would not be expected to occur annually and are different from the typical railroad business operations. The purpose and intent of the income indicator of value is to match income with sources of capital and therefore every source of capital utilized or available to be utilized to purchase assets should be reflected in the capitalization rate determination as well as all operating income. The director shall not include a separate adjustment to either income stream for noncapitalized operating leases. In the event the railroad company has no income or has a negative income, the indicator of value set forth in this subrule shall not be utilized.

76.5(2) If any operating property is clearly not income producing and, therefore, is not reflected in the income stream, the value of that asset shall be determined separately and added to the value of the other operating property as determined using the income indicator of value. The capitalization rate shall be adjusted, if necessary, for the market rate of return for the sources of capital utilized to purchase such non-income-producing properties where the sources can be clearly identified; otherwise the cost of the sources of capital shall be presumed to be equal to the overall market-weighted costs of the other sources of capital.

76.5(3) If the railroad company is one which can earn a return on assets purchased with sources of capital, excluding the company's deferred income taxes, the income will reflect the earnings on those assets, and as a consequence, a separate adjustment to the capitalization rate is required. The capitalization rate shall be determined by utilizing, where appropriate, market rates of return weighted according to a market determined capital structure. All sources of capital shall be considered in the capital structure as well as market costs associated with each source of capital; otherwise the cost of the sources of capital shall be presumed to be equal to the overall market-weighted costs of the identified sources of capital. The following is an example of the application of this rule.

	(1) Market Value	(2) Market Rate of Return	(3) % to Total	(4) Component (Col. 2 × Col. 3)
Common Stock	60,000	15%	66.67	10.00
Preferred Stock	5,000	13%	5.55	.72
Debt	25,000	12%	27.78	3.33
	90,000		100.00	14.05

This rule is intended to implement Iowa Code section 434.15.

701—76.6(434) Cost approach to unit value. The cost approach to unit value shall be determined by combining the cost of the operating properties of the railroad and deducting therefrom an allowance for depreciation calculated on a straight-line basis. Other forms of depreciation may be deducted if found to exist.

This rule is intended to implement Iowa Code section 434.15.

701—76.7(434) Correlation. In making a final determination of value, the director shall give consideration to each of the methodologies described in these rules, the use of which will result in the determination of the fair and reasonable market value of the railroad company's entire operating property. The stock and debt indicator of value and the income indicator of value shall each be weighted

at 50 percent. In this particular circumstance, when the director utilizes the stock and debt indicator and the income indicator in the correlation process, the cost indicator will be given no weighting. If circumstances dictate that a particular method is inappropriate for a specific company, that method shall be given little or no weight in the final correlation of value.

This rule is intended to implement Iowa Code section 434.15.

701—76.8(434) Allocation of unit value to state.

76.8(1) *Allocation by director.* The director shall allocate that portion of the total unit value of the railroad company's operating property to the state of Iowa based on factors which are representative of the ratio that the railroad company's property and activity in the state of Iowa bear to the railroad company's total property and activity. These factors are:

a. Gross operating revenue weighted 40 percent.

b. All track mileage weighted 35 percent.

c. Revenue traffic units weighted 15 percent.

d. Car and locomotive mileage weighted 10 percent.

76.8(2) *Alternative methods.* In the event that the allocation prescribed by subrule 76.8(1) does not fairly and reasonably allocate unit value of the railroad company's operating property to the state of Iowa, the director shall consider such other factors as the director deems appropriate by the exercise of sound appraisal judgment.

This rule is intended to implement Iowa Code section 434.15.

701—76.9(434) Exclusions.

76.9(1) From the estimate of value pursuant to rule 76.8(434), there shall be a deduction for pollution control property provided in Iowa Code section 427.1(32).

76.9(2) From the estimate of value pursuant to rule 76.8(434), there shall be a deduction for interstate bridges and other locally assessed property. Locally assessed property shall mean all property subject to an assessing authority pursuant to Iowa Code section 441.54. The respondent shall supply a schedule providing the actual value as determined by the local assessor on or nearest to the current assessment date.

76.9(3) From the estimate of value determined under rule 76.8(434), the value of Iowa personal property shall be deducted pursuant to Burlington Northern Railroad Company vs. Gerald D. Bair, Director of the Department of Revenue of Iowa—United States District Court Order-Civil No. 83-100-A. The computation for the percentage of personal property shall be equal to the ratio of the net book value of personal property divided by the net book value of the total property.

76.9(4) From the estimate of value determined under rule 76.7(434), the intangible value shall be deducted pursuant to Burlington Northern Railroad Company vs. Gerald D. Bair, Director of the Department of Revenue of Iowa—United States District Court Order No: 4-90CV-60406. The deduction shall be equal to 6.6 percent of the correlated system value for the stock and debt indicator and the income indicator.

This rule is intended to implement Iowa Code sections 427.1(32), 434.15 and 434.20.

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CHAPTER 77
DETERMINATION OF VALUE OF UTILITY COMPANIES
[Prior to 12/17/86, Revenue Department[730]]

701—77.1(428,433,437,438) Definition of terms.

77.1(1) The term *"utility company"* shall mean and include all persons engaged in the operating of gasworks, waterworks, telephones, including telecommunication companies and cities that own or operate a municipal utility providing local exchange services pursuant to Iowa Code chapter 476, pipelines, electric transmission lines, and electric light or power plants, as set forth in Iowa Code chapters 428, 433, 437, and 438. Any utility company subject to taxation under Iowa Code chapter 437A shall not be subject to valuation under this chapter.

77.1(2) The term *"unit value"* or *"unit market value"* shall mean the market value arrived at by using the appraisal method of valuing an entire operating property, considered as a whole and capable of performing the function for which it was created, such as (by way of illustration and not limitation) (1) generating, transmitting and distributing electricity; or (2) transporting or distributing natural gas.

77.1(3) The term *"operating property"* shall mean all property owned by or leased to a utility company, not otherwise taxed separately, made nontaxable by law, or property leased to companies valued and assessed pursuant to Iowa Code chapter 428, which is necessary to and without which the utility could not perform the activities for which the utility is formed, such as (by way of illustration and not limitation) (1) generating, transmitting and distributing electricity; or (2) transporting or distributing natural gas. With regard to property whose identity as "operating" or "nonoperating" property is not clearly ascertainable, the property shall be considered operating property if the utility could not reasonably be expected to perform the referenced activities in the absence of such property.

77.1(4) The term *"nonoperating property"* shall mean all property owned by a utility not defined by subrule 77.1(3) as "operating property."

77.1(5) The term *"comparable sales"* shall mean actual sales transactions, between willing buyers and willing sellers, neither being under any compulsion to buy or sell, of property which is similar in purpose, function and design to the property to which the comparison is being made. Where the determination of value is being made, the sale of a portion of a unit which is nominally similar in purpose and function to the unit being valued shall not be considered a comparable sale, absent proof by evidence other than the terms of the sale itself, that the sales price was based on some unit of measurement which is common both to the property sold and the property being valued and which is not affected by the fact that less than the entire unit is being sold, such as (by way of illustration and not limitation) the price per square foot of the property.

77.1(6) The term *"income approach to unit value"* shall mean the estimate of unit market value obtained by dividing an appropriate income stream by an appropriate discount rate.

77.1(7) The term *"stock and debt approach to unit value"* shall mean the estimate of unit market value determined by combining the market value of the stock, debt, current liabilities, other liabilities, including leases, except those leases of companies valued and assessed pursuant to Iowa Code chapter 428, and deferred credits associated with the operating property of a utility company.

77.1(8) The term *"cost approach to unit value"* shall mean the estimate of value determined by combining the original cost less a depreciation allowance for the operating property of a utility company.

77.1(9) The term *"respondent"* shall include the utility company whose property is to be valued.

77.1(10) The term *"leased assets"* shall mean both operational and capital leases.

77.1(11) The term *"original cost"* shall mean the actual cost of the property to its present owner, not the first cost at the time it was originally constructed and placed in service.

77.1(12) *"Long distance telephone company"* means an entity that provides telephone service and facilities between local exchanges and has been classified as such by the utilities board of the department of commerce, but does not include a cellular service provider or a local exchange utility holding a certificate issued under Iowa Code section 476.29(12). The rules contained in 701—Chapter 71, rather than this chapter, apply to the assessment of long distance telephone company property first assessed for taxation on or after January 1, 1996.

77.1(13) The term *"replacement cost new less depreciation"* or *"RCNLD"* shall mean the cost to the present owner of acquiring or constructing at current prices a property that is the functional equivalent of an existing property less an allowance for depreciation.

This rule is intended to implement Iowa Code chapters 428, 437, and 438 and sections 433.12 and 476.1D(10).

701—77.2(428,433,437,438) Filing of annual reports.

77.2(1) Annual reports required to be filed by the reporting utility company shall be on forms prescribed and supplied by the department. It shall be the responsibility of the utility company to obtain the forms supplied by the department.

77.2(2) Additional schedules or attachments submitted by respondent shall be identified as to subject matter, shall be typed on paper of similar size to that used in the annual report, and all data contained in the schedules or attachments shall be adequately explained and documented as to source. When such additional schedules or attachments are submitted, they shall be considered part of the annual report.

77.2(3) The director may require the filing of additional information if deemed necessary. The request for additional information shall be answered completely and in accordance with instructions therein specified. Additional information required shall be considered part of the annual report.

This rule is intended to implement Iowa Code sections 428.23, 433.1, 433.2, 437.2, 437.4, 437.14, 438.3, 438.4, 438.5 and 438.6.

701—77.3(428,433,437,438) Comparable sales. Sale prices of comparable property in normal transactions shall be taken into consideration in arriving at its market value. In the event comparable sales are not available, the market value of operating property shall be determined by utilizing the three recognized unit approaches to value (i.e., stock and debt approach, income capitalization approach and the cost approach).

This rule is intended to implement Iowa Code sections 428.28, 433.1, 433.2, 437.2, 437.4, 437.14, 438.3, 438.4, 438.5 and 438.6.

701—77.4(428,433,437,438) Stock and debt approach to unit value.

77.4(1) The stock and debt approach to unit value estimates the market value of the operating property by combining the market values of the common stock, preferred stock, debt, current liabilities, other liabilities, leases, and deferred credits associated with the operating property of the utility company, on the basis that the market value of these items may be used as a surrogate for the market value of the operating property itself.

77.4(2) The market value of the long-term debt associated with the operating property shall be calculated by first determining a ratio, based on book values, whose numerator shall be the operating property and whose denominator shall be the total property of the utility company. This ratio shall then be multiplied times the gross market value of the long-term debt and the result obtained shall be the market value of the long-term debt associated with the operating property. The market value of publicly traded debt shall be determined by utilizing an average of the monthly high and low value of the debt for the 12 months preceding the valuation date. The values to be utilized shall be obtained by reference to any acceptable reporter of the market on which the securities are traded. If all or some of the securities are not publicly traded, the value of the securities shall be determined by appropriate comparable securities. The comparable securities shall be publicly traded and shall have a similar maturity date and coupon rate, as well as risk indicators similar to the untraded security. In each instance, the utility company shall provide the department a statement of the market value of all securities and an explanation of how that market value was derived, including the identity of any comparable securities utilized. In the event that any utility is unable to utilize the foregoing rule to value its securities, it may provide the department with its own determination of the fair market value of its untraded securities together with a complete explanation of why the foregoing rule was not used and a detailed explanation of the method used.

77.4(3) The market value of the preferred stock associated with the operating property shall be calculated by first determining a ratio, based on book values, whose numerator shall be the operating property and whose denominator shall be the total property of the utility company. This ratio shall then be multiplied times the gross market value of the preferred stock and the result obtained shall be the market value of the preferred stock associated with the operating property.

The market value of publicly traded shares of preferred stock shall be determined by utilizing an average of the monthly high and low value of the preferred stock for the 12 months preceding the valuation date. The values to be utilized shall be obtained by reference to any acceptable reporter of the market on which the preferred stock is traded. If all or some series of the preferred stock are not publicly traded, the value of such preferred stock shall be determined by appropriate comparable securities. The comparable securities shall be publicly traded and shall have the same or a similar dividend rate, as well as risk indicators similar to the untraded preferred stock. In each instance, the utility company shall provide the department a statement of the market value of its preferred stock and an explanation of how that market value was derived, including the identity of any comparable securities utilized. In the event that any utility is unable to utilize the foregoing rule to value its securities, it may provide the department with its own determination of the fair market value of its untraded securities together with a complete explanation of why the foregoing rule was not used and a detailed explanation of the method used.

77.4(4) The market value of the common equity of a utility company associated with the company's operating property shall be determined by capitalizing the income available to the common equity holders from the operating property, by an appropriate common equity return rate, all of which shall be determined as follows:

a. The calculation of the income to be capitalized shall begin with the utility company's net income after taxes but before interest charges and preferred dividends for the 12-month period preceding the valuation date. The net income after taxes, but before interest charges and preferred dividends, shall be determined from the utility company's regulatory report, or if no regulatory report is filed, from the audited financial statements of the utility company. In the event that the respondent has no income or has negative income, an alternative method may be utilized to estimate the market value of the common equity.

b. For rate base regulated companies which do not earn a return on construction-work-in-progress, the income determined in subrule 77.4(4) shall be increased by the amount of income associated with the construction-work-in-progress which will be placed into service within one year of the assessment date. The income associated with the construction-work-in-progress shall be determined by multiplying the cost of said construction by the latest overall cost of capital as determined by the regulatory agency.

c. The income determined in 77.4(4)*"a"* shall be further reduced by that portion of the preferred dividends serviced by the income generated by the operating property, which shall be calculated by multiplying the total preferred dividend requirement by the ratio determined in 77.4(3).

d. The income determined in 77.4(4)*"a"* shall be further reduced by that portion of the debt service provided by the income generated by the operating property, which shall be calculated by multiplying the total debt service by the ratio determined in 77.4(2).

e. If there are any other interest payments required, a determination shall be made as to whether the underlying obligation was used to purchase operating or nonoperating assets. If no direct determination can be made, the interest payment shall be allocated in the same fashion as the debt service and preferred dividends. If the underlying obligation can be shown to be associated particularly, or in some specific proportion, to operating or nonoperating property, the interest payment shall be allocated either entirely or in such proportion to operating or nonoperating property. It shall be the obligation of the utility company, in its reports to the department, to identify and detail any interest payments which are particularly associated with operating or nonoperating property, and if the utility company fails to do so, the department may determine that all such payments may be allocated between operating and nonoperating property in the same ratio as is the debt service and preferred stock dividends (see subrules 77.4(2) and 77.4(3)).

f. The income determined in 77.4(4)*"a"* shall be adjusted by deducting any net income included therein received from nonoperating property and, conversely, the referenced income shall be increased to account for any net loss created by any nonoperating property.

g. The income determined in 77.4(4), paragraph *"a,"* for pipeline companies shall be further reduced by deducting the current year net adjustment expense for investment tax credits.

h. Any extraordinary item affecting the income determined herein shall be eliminated in the calculation of the income shown under this rule. Any construction-work-in-progress not placed into service within one year of the assessment date shall be separately valued by the department.

i. The equity rate of return for the utility company shall be determined by the use of the capital asset pricing model although where appropriate discounted cashflow model (commonly called the Gorden Growth Model - $r = \frac{D_1}{P_o} + g$) may be utilized as an alternative.

Only in circumstances where these models are not able to be utilized will reliance be placed on a risk premium model or upon an earnings-price ratio, or other similar model, for determining the expected market rate of return on equity.

j. The income attributable to operating property available to the common equity holder as determined in 77.4(4)*"a"* to *"g"* shall then be divided by the equity rate as determined in 77.4(4)*"h,"* and the result shall be the market value of the common equity associated with the operating property.

77.4(5) In the event the utility company has entered into leases of operating property, the market value of the property leased shall be determined by calculating the net present value of the leases, which shall be accomplished by discounting the future lease payments for each lease. The following is offered as an illustration of the calculation of such market value:

Length of Lease	Annual Lease Payments
1. Lease (a) 5 years	$1,500,000
2. Lease (b) 7 years	$ 800,000
3. Lease (c) 3 years	$ 120,000

Net present value of leases (assuming 8 percent rate)

Lease (a) = $1{,}500{,}000 \div (1.08)^1 + 1{,}500{,}000 \div (1.08)^2 \ldots 1{,}500{,}000 \div (1.08)^5$

Lease (b) = $800{,}000 \div (1.08)^1 + 800{,}000 \div (1.08)^2 \ldots 800{,}000 \div (1.08)^7$

Lease (c) = $120{,}000 \div (1.08)^1 + 120{,}000 \div (1.08)^2 \ldots 120{,}000 \div (1.08)^3$

Net Present Value of Lease (a)	=	$ 5,989,065
Net Present Value of Lease (b)	=	$ 4,165,096
Net Present Value of Lease (c)	=	$ 309,251
Total Lease Values		$10,463,412

The discount rate shall be equal to the utility company's overall market cost of capital.

77.4(6) In the event the utility company has other sources of capital, such as (by way of illustration and not limitation) current liabilities and accumulated investment tax credits which cannot be identified as having been utilized to purchase specific assets, the market value of such sources of capital shall be allocated between operating and nonoperating assets in the same manner as long-term debt or preferred stock (see subrules 77.4(2) and 77.4(3)). Accumulated deferred income taxes are not included in this adjustment. The book value for accumulated deferred income taxes should be removed from the stock and debt approach before making this calculation. If any such source of capital was created specifically for the purchase of property which can be identified as operating property or nonoperating property, the utility company must identify such sources of capital in their annual report to the department, together with the appropriate evidence of such. If the utility company fails to provide such information, the department may determine that such sources of capital may be allocated in the same manner as long-term

debt or preferred stock (see subrules 77.4(2) and 77.4(3)). The market value of any such source of capital, in the absence of evidence to the contrary submitted by the utility with its annual report, shall be the book value.

77.4(7) The value determined by summing the portions of the enumerated sources of capital associated with the operating property of the utility company provided in subrules 77.4(2) to 77.4(6) shall be the unit value of the operating properties determined by the stock and debt approach to unit value.

This rule is intended to implement Iowa Code sections 428.29, 433.4, 437.6, 437.7, and 438.14.

701—77.5(428,433,437,438) Income capitalization approach to unit value.

77.5(1) The income capitalization approach to unit value estimates the market value of the operating property by dividing the income stream generated by the operating assets by a market derived capitalization rate based on the costs of the various sources of capital utilized or available for use to purchase the assets generating the income stream. The purpose and intent of the income indicator of value is to match income with sources of capital and, therefore, every source of capital used or available to be used to purchase assets should be reflected in the capitalization rate determination as well as all operating income.

The net operating income to be capitalized for pipeline companies shall be a weighted average net operating income. The weighted average net operating income shall consist of an average of the three 12-month periods immediately preceding the valuation date. Each of the three preceding 12-month periods shall be weighted by multiplying the first preceding period by three, the second preceding period by two, and the third preceding period by one. The income stream for pipeline companies shall be further reduced by deducting the current year net adjustment expense for investment tax credits.

If the utility company has no income or has a negative income, the indicator of value set forth in this subrule shall not be utilized.

If the utility company is one which is not allowed to earn a return on assets purchased with sources of capital such as the company's deferred income taxes, the income will not reflect the earnings on those assets, and as a consequence, a separate adjustment to the income indicator of value must be made to account for the value of those assets. In such instances, the income indicator of value shall be increased by an amount equal to the book value of the source of capital involved, such as the accumulated deferred income taxes. The adjustment to the income approach for accumulated deferred income taxes shall not be made for pipeline companies. If any other operating property is clearly not income producing and, therefore, not reflected in the income stream, the value of that asset shall be determined separately and added to the value of the other operating property as determined using the income indicator of value. The capitalization rate shall be adjusted, if necessary, for the market rate of return for the sources of capital utilized to purchase such non-income-producing properties where the sources can be clearly identified. Otherwise, the cost of the sources of capital shall be presumed to be equal to the overall market weighted costs of the identified sources of capital.

77.5(2) If the utility company is one which can earn a return on assets purchased with sources of capital such as the company's deferred income taxes, the income will reflect the earnings on those assets, and as a consequence, a separate adjustment to the capitalization rate is required. The capitalization rate shall be determined by utilizing, where appropriate, market rates of return weighted according to a market-determined capital structure, with the exception of deferred credits whose market value shall be equal to its value on the company's books and whose cost shall be zero. All sources of capital shall be considered in the capital structure as well as market costs associated with each source of capital, otherwise, the cost of the sources of capital shall be presumed to be equal to the overall market-weighted costs of the identified sources of capital. The following is an example of the application of this rule:

	(1) Market Value	(2) Market Rate of Return	(3) % to Total	(4) Component (Col. 2 × Col. 3)
Common Stock	60,000	15%	62.50	9.38
Preferred Stock	5,000	13%	5.21	.68
Debt	25,000	12%	26.04	3.12
Deferred Credits	6,000	—0—	6.25	—0—
	96,000		100.00	13.18

This rule is intended to implement Iowa Code sections 428.29, 433.4, 437.6, 437.7, and 438.14.

701—77.6(428,433,437,438) Cost approach to unit value. The cost approach to unit value shall be determined by combining the cost of the operating properties of the utility and deducting therefrom an allowance for depreciation calculated on a straight-line basis. Other forms of depreciation may be deducted if found to exist. The director may use the replacement cost new less depreciation (RCNLD) valuation methodology for determining the assessed value of the Iowa operating property required under Iowa Code chapter 433.

This rule is intended to implement Iowa Code sections 428.29, 433.4, 437.6, 437.7, and 438.14.

701—77.7(428,433,437,438) Correlation. In making a final determination of value the director may give consideration to each of the methodologies described in these rules, the use of which will result in the determination of the fair and reasonable market value of the utility company's entire operating property. Generally, for other than pipeline companies, the stock and debt indicator of value shall be considered to be the most useful, the income indicator the next most useful and the cost indicator the least useful. If circumstances dictate that a particular indicator is inappropriate or less reliable for a particular company, the correlation of the indicators of value shall be adjusted accordingly. The correlation for pipeline companies will consider the cost indicator to be the most useful, the income indicator the next most useful, and the stock and debt indicator the least useful. In making the final determination of value, the director will weigh the stock and debt indicator of value at 10 percent, the income indicator of value at 40 percent and the cost indicator of value at 50 percent.

This rule is intended to implement Iowa Code sections 428.29, 433.4, 437.6, 437.7, and 438.14.

701—77.8(428,433,437,438) Allocation of unit value to state.

77.8(1) *Allocation by director.* The director shall allocate that portion of the total unit value of the utility company's operating property to the state of Iowa based on factors which are representative of the ratio that the utility company's property and activity in the state of Iowa bear to the utility company's total property and activity. These factors are:

a. Gross operating property weighted 75 percent, and

b. Gross operating revenues, or MCF miles, or barrel miles weighted 25 percent. The selection of the property and use factor to be utilized shall depend on the type of utility being valued.

77.8(2) *Alternative methods.* In the event that the allocation prescribed by subrule 77.8(1) does not fairly and reasonably allocate unit value of the utility company's operating property to the state of Iowa, the director shall consider such other factors as the director deems appropriate by the exercise of sound appraisal judgment.

This rule is intended to implement Iowa Code sections 428.29, 433.4, 437.6, 437.7, and 438.14.

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CHAPTER 78
PROPERTY TAX EXEMPTIONS
[Prior to 12/17/86, Revenue Department[730]]

701—78.1(427,441) Responsibility of local assessors.

78.1(1) The assessor shall determine the taxable status of all property. If an application for exemption is required to be filed under Iowa Code subsection 427.1(14), the assessor shall consider the information contained in the application in determining the taxable status of the property. The assessor may also request from any property owner or claimant any additional information necessary to the determination of the taxable status of the property. However, the assessor shall not base the determination of the taxable status of property solely on the statement of objects or purposes of the organization, institution, or society seeking an exemption. The use of the property rather than the objects or purposes of the organization, institution, or society shall be the controlling factor in determining the taxable status of property. (*Evangelical Lutheran G.S. Society v. Board of Review of Des Moines,* 200 N.W.2d 509; *Northwest Community Hospital v. Board of Review of Des Moines,* 229 N.W.2d 738.)

78.1(2) In determining the taxable status of property, the assessor shall construe the appropriate exemption statute and these rules in a strict manner. If there exists any doubt as to the taxable status of property, the property shall be subject to taxation. The burden shall be upon the organization, society, or institution to show that the exemption should be granted. (*Evangelical Lutheran G.S. Society v. Board of Review of Des Moines,* 200 N.W.2d 509; *Southside Church of Christ of Des Moines v. Des Moines Board of Review,* 243 N.W.2d 650; *Aerie 1287, Fraternal Order of Eagles v. Holland,* 226 N.W.2d 22.)

78.1(3) If the assessor determines that all or part of a property is subject to taxation, the assessor shall notify the taxpayer by the issuance of an assessment roll as provided in Iowa Code sections 441.26 and 441.27. If the assessor determines that property has been erroneously exempted from taxation, the assessor shall revoke the exemption for the current assessment year but not for prior assessment years.

78.1(4) The assessor's determination of the taxable status of property may be appealed to the local board of review pursuant to Iowa Code section 441.37.

This rule is intended to implement Iowa Code sections 427.1 and 441.17(11).

701—78.2(441) Responsibility of local boards of review.

78.2(1) If the board of review determines that property has been erroneously exempted from taxation, the board of review shall revoke the exemption for the current assessment year, but not for prior assessment years, and give notice to the taxpayer as provided in Iowa Code section 441.36.

78.2(2) If a board of review acts in response to a protest arising from an assessor's determination of the taxable status of property, the board of review shall notify the taxpayer of its disposition of the protest in accordance with the provisions of Iowa Code section 441.37.

This rule is intended to implement Iowa Code sections 441.35(3), 441.36 and 441.37.

701—78.3(427) Responsibility of director of revenue. The director may revoke or modify an exemption on property found to have been erroneously granted by the local taxing officials. Any taxpayer or taxing district may request that the director revoke or modify an exemption or the director may on the director's own determination revoke or modify an exemption. The director may revoke or modify an exemption for the tax year commencing in the tax year in which the request is made to the director or the tax year commencing in the tax year in which the director's own motion is filed. The director shall hold a hearing on the appropriateness of the exemption prior to issuing an order for revocation or modification. The director's order to revoke or modify an exemption may be appealed in accordance with Iowa Code chapter 17A or in the district court of the county in which the property is located.

This rule is intended to implement Iowa Code section 427.1(16) as amended by 2001 Iowa Acts, House File 715.

701—78.4(427) Application for exemption.

78.4(1) Each society or organization seeking an exemption under Iowa Code section 427.1(5), 427.1(8), or 427.1(21) shall file with the appropriate assessor a statement containing the following information:

a. The legal description of the property for which an exemption is requested.

b. The use of all portions of the property, including the percentage of space not used for the appropriate objects of the society or organization and the percentage of time such space is so utilized.

c. A financial statement showing the income derived and the expenses incurred in the operation of the property.

d. The name of the organization seeking the exemption.

e. If the exemption is sought under Iowa Code subsection 427.1(8), the appropriate objects of the society or organization.

f. The book and page number on which is recorded the contract of purchase or the deed to the property and any lease by which the property is held.

g. An oath that no persistent violations of the laws of the state of Iowa will be permitted or have been permitted on such property.

h. The signature of the president or other responsible official of the society or organization showing that information contained in the claim has been verified under oath as correct.

78.4(2) The statement of objects and uses required by Iowa Code subsection 427.1(14) shall be filed only on forms prescribed by the director of revenue and made available by assessors.

78.4(3) Applications for exemptions required under Iowa Code subsection 427.1(14) must be filed with the assessor not later than February 1 of the year for which the exemption is requested.

78.4(4) If a properly completed application is not filed by February 1 of the assessment year for which the exemption would apply, no exemption shall be allowed against the property. (1964 O.A.G. 437.)

This rule is intended to implement Iowa Code subsection 427.1(14) as amended by 2001 Iowa Acts, House File 736.

701—78.5(427) Partial exemptions. In the event a portion of property is determined to be subject to taxation, the taxable value of such property shall be an amount which bears the same relationship to the total value of the entire property as the area of the portion subject to taxation bears to the area of the entire property. If a portion of a structure is subject to taxation, a proportionate amount of the value assigned to the land upon which the structure is located shall also be subject to taxation.

This rule is intended to implement Iowa Code section 427.1.

701—78.6(427,441) Taxable status of property.

78.6(1) The status of property on July 1 of the fiscal year which commences during the assessment year determines its eligibility for exemption in situations where no claim is required to be filed to procure a tax exemption. If the property is in a taxable status on July 1, no exemption is allowable for that fiscal year. If the property is in an exempt status on July 1, no taxes are to be levied against the property during that fiscal year.

Exceptions to this rule are as follows:

a. Land acquired by the state of Iowa or a political subdivision thereof after July 1 in connection with the establishment, improvement or maintenance of a public road shall be taxable for that portion of the fiscal year in which the property was privately owned.

b. All current and delinquent tax liabilities are to be canceled and no future taxes levied against property acquired by the United States or its instrumentalities, regardless of the date of acquisition, unless the United States Congress has authorized the taxation of specific federally owned property. (1980 O.A.G. 80-1-19.) The following exceptions apply:

(1) Real and personal property owned by the Federal Housing Authority (FHA) and real property owned by the Federal Land Bank Association is subject to taxation and any tax liabilities existing at the

time of the acquisition are not to be canceled. However, the personal property of the Federal Land Bank Association is exempt from taxation. (1982 O.A.G. 82-1-16; 12 USCS §2055.)

(2) Existing tax liabilities against property acquired by the Small Business Administration are not to be canceled if the acquisition takes place after the date of levy. However, no taxes are to be levied if the acquisition takes place prior to the levy date or for subsequent fiscal years in which the Small Business Administration owns the property on July 1. (15 USCS §646.)

c. Land owned by the state and leased by the department of corrections or the department of human services pursuant to Iowa Code section 904.302, 904.705, or 904.706 to an entity that is not exempt from property tax is subject to taxation for the term of the lease. This provision applies to leases entered into on or after July 1, 2003. The lessor shall file a copy of the lease with the county assessor of the county where the land is located.

78.6(2) The status of property during the fiscal year for which an exemption was claimed determines its eligibility for exemption in situations where a claim is required to be filed to procure a tax exemption. If the property is used for an appropriate purpose for which an exemption is allowable for all of the fiscal year for which the exemption is claimed, no taxes are to be levied against the property during that fiscal year. If the property for which an exemption has been received is used for an appropriate purpose for which an exemption is allowable for only a portion of the fiscal year for which the exemption is claimed, the taxes shall be prorated in accordance with the period of time the property was in a taxable status during the fiscal year.

This rule is intended to implement Iowa Code section 427.1(1) as amended by 2003 Iowa Acts, House File 665, and sections 427.1(2), 427.2, 427.18, and 427.19.

701—78.7 Personal property. Rescinded IAB 10/14/92, effective 11/18/92.

701—78.8(427) Abatement of taxes. The board of supervisors may abate the taxes levied against property acquired by gift or purchase if the property was acquired after the deadline for filing a claim for property tax exemption if the property would have been exempt under Iowa Code section 427.1, subsection 8 or 9, if a timely claim had been filed, or was acquired after July 1 if the property would have been exempt under Iowa Code section 427.1, subsection 7.

This rule is intended to implement Iowa Code section 427.3 as amended by 2007 Iowa Acts, House File 923.

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CHAPTER 79
REAL ESTATE TRANSFER TAX AND DECLARATIONS OF VALUE
[Prior to 12/17/86, Revenue Department[730]]

701—79.1(428A) Real estate transfer tax: Responsibility of county recorders.

79.1(1) *Forms.* County recorders shall use only forms provided by the department of revenue for the collection of real estate transfer tax and the recording and reporting of such tax collections.

79.1(2) *Monthly reports.* County recorders shall submit a report to the department of revenue on or before the tenth day of each month enumerating real estate transfer tax collection information for the preceding month. This report shall be submitted on forms prescribed by the department of revenue and shall contain such information as is deemed necessary by the department.

79.1(3) *Evidence of payment.* The recorder shall enter the tax payment amount, date of payment, and initials of the recorder or authorized employee of the recorder on the face of the instrument of conveyance presented for recording.

79.1(4) *Recording refused.* The county recorder shall refuse to record any deed, instrument, or writing regardless of any statement by the grantor, grantee, or their agents that the transaction is exempt pursuant to Iowa Code section 428A.2, if, in the recorder's judgment, additional facts are necessary to clarify the taxable status of the transfer or determine the full consideration paid for the property. The county recorder may request from the grantor, grantee, or their agents, any information necessary to determine the taxable status of the transfer or the full amount of consideration involved in the transaction. County recorders under no circumstance shall record any deed or instrument of conveyance for which the proper amount of real estate transfer tax has not been collected. This applies to the collection of tax in excess of the amount due for the actual amount of consideration as well as situations in which an insufficient amount of tax has been collected.

79.1(5) *Refunds or underpayments.*

a. *Refunds.* County recorders shall not refund any overpayment of a real estate transfer tax. The grantor of the real property for which the real estate transfer tax has been overpaid shall petition the state appeal board for a refund of the overpayment amount paid to the treasurer of state. A refund of the remaining portion of the overpayment shall be petitioned from the board of supervisors of the county in which the tax was paid.

b. *Underpayments.* The county recorder shall collect any amount of tax found to be due. If the county recorder is unable to collect the tax, the director of revenue shall collect the tax in the same manner as income taxes are collected and pay the county its proportionate share.

79.1(6) *Multiple parcels.* If the real estate conveyance contains multiple parcels, the tax is to be paid to each county in which the property is located based on the consideration paid for each property.

This rule is intended to implement Iowa Code chapter 428A as amended by 2001 Iowa Acts, Senate File 372 and House File 736.

701—79.2(428A) Taxable status of real estate transfers.

79.2(1) *Federal rules and regulations.* In factual situations not covered by these rules and involving those portions of Iowa law which are consistent with the former federal statutes (26 USCA 4361) that imposed a real estate transfer tax, the department of revenue and county recorders shall follow the federal rules and regulations in administering the provisions of Iowa Code chapter 428A. (1968 O.A.G. 643)

79.2(2) *Transfer of realty to a corporation or partnership.* Capital stock, partnership shares and debt securities received in exchange for real property constitutes consideration which is subject to the real estate transfer tax. Where the value of the capital stock is definite or may be definitely determined in a dollar amount, the specific dollar amount is subject to the tax. Where the value of the capital stock is not definitely measurable in a dollar amount, the tax imposed is to be calculated on the fair market value of the realty transferred. For purposes of this rule, fair market value shall be as defined in Iowa Code section 441.21. (1976 O.A.G. 776)

Real estate transfer tax is not due when real property is conveyed to a family corporation, partnership, limited partnership, limited liability partnership, or limited liability company as defined in Iowa Code

section 428A.2 in an incorporation or organization action where the only consideration is the issuance of capital stock, partnership shares, or debt securities of the corporation, partnership, limited partnership, limited liability partnership, or limited liability company. Actual consideration other than these shares or debt securities is subject to real estate transfer tax.

79.2(3) *Trades of real estate.* Real estate transfers involving the exchange of one piece of real property for another are transfers subject to the real estate transfer tax. Each grantor of the real estate is liable for the tax based on the fair market value of the property received in the trade as well as other consideration including but not limited to cash and assumption of debt. (1972 O.A.G. 654)

For purposes of this rule, fair market value shall be as defined in Iowa Code section 441.21.

79.2(4) *Conveyance to the United States government or the state of Iowa.* Any conveyance of real estate to the United States or any agency or instrumentality thereof or to the state of Iowa or any agency, instrumentality, or political subdivision thereof not exempt from the real estate transfer tax pursuant to Iowa Code section 428A.2, is subject to the real estate transfer tax. (1968 O.A.G. 579) An exception to this rule is any conveyance to the United States Department of Agriculture, Farmers Home Administration, which is specifically exempted by federal law (7 USCS §1984).

79.2(5) *Conveyance of property on leased land.* The transfer of buildings or other structures located on leased land is subject to the real estate transfer tax. The fact that the person who owns a building or other structure does not own the land upon which the property is located does not exempt this type of conveyance from the real estate transfer tax. (1972 O.A.G. 318)

79.2(6) *Mortgage default.* In the factual situation where a defaulting mortgagor issues a deed or other conveyance instrument to the mortgagee as satisfaction of the mortgage debt, the transaction is subject to the real estate transfer tax. The consideration upon which the tax is calculated is the outstanding unsatisfied mortgage debt.

However, as an exception to this rule, a conveyance of real property to lienholders in lieu of forfeiture or foreclosure action is exempt from real estate transfer tax.

79.2(7) *Completion of contract.* A deed or other conveyance instrument given at the time of completion of a single real estate contract is subject to the real estate transfer tax. The tax is to be computed on the full amount of the purchase price as stated in the contract and not solely on the last installment payment made prior to the issuance of the deed or other conveyance instrument. If the original contract is assigned to a third party or parties prior to fulfillment of such contract, the tax is to be computed only on the original contract price upon completion of the contract.

When a single deed or other conveyance instrument is given at the time of completion of multiple successive real estate contracts, separate taxes are to be computed and paid based upon the full purchase price stated in each contract. For example, if A sells real estate to B on an installment contract, and then B sells the same property to C on another installment contract, and subsequently both A and B transfer their respective interests in the property to C via one deed, A is liable for a tax computed on the full purchase price stated in the original contract to which A was a party and B is liable for a tax computed on the full purchase price stated in the subsequent contract to which B was a party.

79.2(8) *Assignments of contract.* Assignments of real estate contracts by contract sellers and contract buyers are not subject to the real estate transfer tax. (1970 O.A.G. 605)

79.2(9) *Corporate and partnership dissolution.* A conveyance of realty by a corporation or partnership in liquidation or in dissolution to its shareholders or partners subject to the debts of the corporation or partnership is a conveyance subject to the real estate transfer tax. However, if there are no debts and the conveyance is made solely for the cancellation and retirement of the capital stock or dissolution, the tax does not apply.

Real estate transfer tax is not due when real property is conveyed from a family corporation, partnership, limited partnership, limited liability partnership, or limited liability company as defined in Iowa Code section 428A.2 to its shareholders, partners, or members in a dissolution action where the only consideration is capital stock, partnership shares, or debt securities of the corporation, partnership, limited partnership, limited liability partnership, or limited liability company, including the assumption of debts by the shareholders, partners, or members. Actual consideration other than these shares or debt securities is subject to the real estate transfer tax.

79.2(10) *Security instruments.* Any deed or instrument given exclusively to secure a loan or debt is not subject to the real estate transfer tax.

79.2(11) *Marriage dissolution exemption.* Marriage dissolution exemption from the real estate transfer tax provided in Iowa Code section 428A.2(16) applies only to real property conveyances between former spouses specifically mandated by a dissolution decree.

79.2(12) *Family debt cancellation exemption.* The family debt cancellation exemption from the real estate transfer tax provided in Iowa Code section 428A.2(11) applies only to real estate conveyances between husband and wife, or parent and child and indebtedness between these parties.

The amount of indebtedness subject to exemption shall not exceed the fair market value of the property being transferred.

EXAMPLE 1. A son is indebted to his father for $10,000. The son transfers real property with a fair market value of $12,000 to his father as satisfaction of the indebtedness. No real estate transfer tax is due in this situation.

EXAMPLE 2. A son is indebted to his father for $10,000. The son transfers real property with a fair market value of $4,000 to his father as satisfaction of the indebtedness. Real estate transfer tax is due on $6,000 in this situation.

79.2(13) *Assumption of debt.* Any outstanding debt on the property conveyed that is not assumed by the grantee is not to be included as consideration in computing the amount of real estate transfer tax due.

EXAMPLE. Property with a mortgage of $40,000 is transferred from A to B. B pays A $60,000 but does not assume the $40,000 mortgage. The real estate transfer tax is to be computed on the $60,000 cash payment only. If B had assumed the mortgage in addition to making the cash payment, the real estate transfer tax would be computed on $100,000 (the sum of the payment and mortgage).

79.2(14) *Mergers, consolidations, and reorganizations.* Conveyances of real estate resulting from corporate or limited liability company mergers, consolidations, or reorganizations are exempt from the real estate transfer tax. The following definitions are intended to be general guidelines in determining eligibility for exemption under this subsection.

"Merger" means the uniting of two or more corporations or companies into one corporation or company in such manner that the corporation or company resulting from the merger retains its existence and absorbs the other constituent corporation(s) or company(ies) which thereby lose its or their existence.

"Consolidation" means the uniting of two or more corporations or companies into a single new corporation or company, all of the constituent corporations or companies thereby ceasing to exist as separate entities.

"Reorganization" means the transfer of substantially all of the assets of one corporation or company to another corporation or company where the persons having an interest in the old corporation or company maintain substantially the same interest in the new corporation or company.

This rule is intended to implement Iowa Code section 428A.1 as amended by 1996 Iowa Acts, chapter 1167, and section 428A.2 as amended by 1996 Iowa Acts, chapter 1170.

701—79.3(428A) Declarations of value: Responsibility of county recorders and city and county assessors.

79.3(1) *Forms and procedures.* County recorders and county and city assessors shall use only the declaration of value forms and procedures prescribed and provided by the director of revenue for reporting real estate transfers.

79.3(2) *Report of sales.* County recorders and city and county assessors shall complete the appropriate portions of the real estate transfer-declaration of value form for each real estate transfer for which a declaration of value has been completed by the buyer, seller, or agent. The completion of the real estate transfer-declaration of value forms constitutes the preparation of a quarterly sales report to the director of revenue as required by Iowa Code section 421.17(6).

79.3(3) *Transmittal of forms.* Real estate transfer-declaration of value forms filed with the county recorder shall be transmitted promptly to the appropriate assessor. City and county assessors shall transmit to the department of revenue within 60 days of the end of each calendar quarter all real estate transfer-declaration of value forms received from the county recorder during that calendar quarter.

Under no circumstances shall the assessor retain any real estate transfer-declaration of value form longer than designated in this subrule.

79.3(4) *Completion of forms.* County recorders and city and county assessors shall complete declaration of value forms in accordance with instructions issued by the department. The assessed values entered on the forms are to be the final values as of January 1 of the year in which the transfer occurred.

This rule is intended to implement Iowa Code section 428A.1.

701—79.4(428A) Certain transfers of agricultural realty.

79.4(1) In determining whether agricultural realty is purchased by a corporation, limited partnership, trust, alien, or nonresident alien for purposes of providing information required for such transfers by Iowa Code section 428A.1, the definitions in this rule shall apply.

79.4(2) Corporation defined. "Corporation" means a domestic or foreign corporation and includes a nonprofit corporation and cooperatives.

79.4(3) Limited partnership defined. "Limited partnership" means a partnership as defined in Iowa Code section 545.1 and which owns or leases agricultural land or is engaged in farming.

79.4(4) Trust defined. "Trust" means a fiduciary relationship with respect to property, subjecting the person by whom the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it. A trust includes a legal entity holding property as a trustee, agent, escrow agent, attorney-in-fact, and in any similar capacity.

Trust does not include a person acting in a fiduciary capacity as an executor, administrator, personal representative, guardian, conservator or receiver.

79.4(5) Alien defined. "Alien" means a person born out of the United States and unnaturalized under the Constitution and laws of the United States. (*Breuer v. Beery,* 189 N.W. 714, 194 Iowa 243, 244 (1922).)

79.4(6) Nonresident alien defined. "Nonresident alien" means an alien as defined in subrule 79.4(5) who is not a resident of the state of Iowa.

This rule is intended to implement Iowa Code section 428A.1.

701—79.5(428A) Form completion and filing requirements.

79.5(1) *Real estate transfer—declaration of value form.* A real estate transfer—declaration of value form shall be completed for any deed, contract, instrument or writing that grants, assigns, transfers or otherwise conveys real property, except those specifically exempted by law, if the document presented for recording clearly states on its face that it is a document exempt from the reporting requirements as enumerated in Iowa Code section 428A.2, subsections 2 to 13 and 16 to 21, or is a deed given in fulfillment of a previously recorded real estate contract. A real estate transfer—declaration of value form is not required for any transaction that does not grant, assign, transfer or convey real property.

79.5(2) *Real estate transfer—declaration of value: Real estate transfer tax.* Requirements for completing real estate transfer-declaration of value forms or exceptions from filing the forms shall not be construed to alter the liability for the real estate transfer tax or the amount of such tax as provided in Iowa Code chapter 428A.

79.5(3) *Agent defined.* As used in Iowa Code section 428A.1, an agent is defined as any person designated or approved by the buyer or seller to act on behalf of the buyer or seller in the real estate transfer transaction.

79.5(4) *Government agency filing requirements.* The real estate transfer-declaration of value form does not have to be completed for any real estate transfer document in which the state of Iowa or any agency, instrumentality or political subdivision thereof is the grantor, assignor, transferor or conveyor or for any transfer in which the state of Iowa or any agency, instrumentality or political subdivision thereof is the grantee or assignee where there is no consideration. However, any transfer in which any unit of government is the grantee or assignee where there is consideration is subject to the real estate transfer-declaration of value filing requirements (1980 O.A.G. 92) and any transfer to which the United States or any agency or instrumentality thereof is a party to the transfer is subject to the real estate

transfer-declaration of value filing requirements. An exception to this subrule is conveyances for public purposes occurring through the exercise of the power of eminent domain.

79.5(5) *Recording refused.* The county recorder shall refuse to record any document for which a real estate transfer-declaration of value is required if the form is not completed accurately and completely by the buyer or seller or the agent of either. The declaration of value shall include the social security number or federal identification number of the buyer and seller and all other information required by the director of revenue, *(Iowa Association of Realtors et al v. Iowa Department of Revenue,* CE 18-10479, Polk County District Court, February 4, 1983.) However, if having made good faith effort, the person or person's agent completing the declaration of value is unable to obtain the social security or federal identification number of the other party to the transaction due to factors beyond the control of the person or person's agent, a signed affidavit stating that the effort was made and the reasons why the number could not be obtained shall be submitted with the incomplete declaration of value. The declaration of value with attached affidavit shall be considered sufficient compliance with Iowa Code section 428A.1 and the affidavit shall be considered a part of the declaration of value subject to the provisions of Iowa Code section 428A.15.

79.5(6) *Multiple parcels.* Separate declarations of value are to be submitted to each county recorder if the real estate conveyed consists of parcels located in more than one county. The consideration paid for each property must be separately stated on the declaration of value or the recorder shall refuse to record the instrument of conveyance.

This rule is intended to implement Iowa Code sections 428A.1, 428A.2, and 428A.4 as amended by 1999 Iowa Acts, chapter 175.

701—79.6(428A) Public access to declarations of value. Declarations of value are public records and shall be made available for public inspection in accordance with Iowa Code chapter 68A.

This rule is intended to implement Iowa Code chapter 428A.

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CHAPTER 80
PROPERTY TAX CREDITS AND EXEMPTIONS
[Prior to 12/17/86, Revenue Department[730]]

701—80.1(425) Homestead tax credit.

80.1(1) *Application for credit.*

a. No homestead tax credit shall be allowed unless the first application for homestead tax credit is signed by the owner of the property or the owner's qualified designee and filed with the city or county assessor on or before July 1 of the current assessment year. (1946 O.A.G. 37) Once filed, the claim for credit is applicable to subsequent years and no further filing shall be required provided the homestead is owned and occupied by the claimant or the claimant's spouse on July 1 of each year and, in addition, the claimant or the claimant's spouse occupies the homestead for at least six months during each calendar year in which the fiscal year for which the credit is claimed begins. It is not a requirement that the six-month period of time be consecutive. If the credit is disallowed and the claimant failed to give written notice to the assessor that the claimant ceased to use the property as a homestead, a civil penalty equal to 5 percent of the amount of the disallowed credit shall be assessed against the claimant in addition to the amount of credit allowed. The assessor, county auditor, and county board of supervisors shall act on the claim in accordance with Iowa Code section 425.3. A claim filed after July 1 of any calendar year applies to the following assessment year.

b. In the event July 1 falls on either a Saturday or Sunday, applications for the homestead tax credit may be filed the following Monday.

c. In the event July 1 falls on either a Saturday or Sunday, applications submitted by mail shall be accepted if postmarked on the following Monday.

d. An assessor may not refuse to accept an application for homestead tax credit. If it is the opinion of the assessor that a homestead tax credit should not be allowed, the assessor shall accept the application for credit and recommend disallowance.

e. If the owner of the homestead is on active duty in the armed forces of this state or of the United States, or is 65 years of age or older or is disabled, the application for homestead tax credit may be signed and delivered by a member of the owner's family or the owner's guardian, conservator or designated attorney-in-fact. For purposes of this rule, any person related to the owner by blood, marriage or adoption shall be considered a member of the owner's family.

f. If a person makes a false application for credit with fraudulent intent to obtain the credit, the person is guilty of a fraudulent practice and the claim shall be disallowed. If the credit has been paid, the amount of the credit plus a penalty equal to 25 percent of the amount of the disallowed credit and interest shall be collected by the county treasurer.

g. For purposes of the homestead tax credit statute, the occupancy of the homestead may constitute actual occupancy or constructive occupancy. However, more than one homestead cannot be simultaneously occupied by the claimant and multiple simultaneous homestead tax credits are not allowable. (Op. St. Bd. Tax Rev. No. 212, February 29, 1980.) Generally, a homestead is occupied by the claimant if the premises constitute the claimant's usual place of abode. Once the claimant's occupancy of the homestead is established, such occupancy is not lost merely because the claimant, for some valid reason, is temporarily absent from the homestead premises with an intention of returning thereto (1952 O.A.G. 78).

80.1(2) *Eligibility for credit.*

a. If homestead property is owned jointly by persons who are not related or formerly related by blood, marriage or adoption, no homestead tax credit shall be allowed unless all the owners actually occupy the homestead property on July 1 of each year. (1944 O.A.G. 26; Letter O.A.G. October 18, 1941)

b. No homestead tax credit shall be allowed if the homestead property is owned or listed and assessed to a corporation, other than a family farm corporation, partnership, company or any other business or nonbusiness organization. (1938 O.A.G. 441; *Verne Deskin v. Briggs,* State Board of Tax Review, No. 24, February 1, 1972)

c. A person acquiring homestead property under a contract of purchase remains eligible for a homestead tax credit even though such person has assigned his or her equity in the homestead property as security for a loan. (1960 O.A.G 263)

d. A person occupying homestead property pursuant to Iowa Code chapter 499A or 499B is eligible for a homestead tax credit. (1978 O.A.G. 78-2-5; 1979 O.A.G. 79-12-2)

e. A person who has a life estate interest in homestead property shall be eligible for a homestead tax credit, provided the remainderman is related or formerly related to the life estate holder by blood, marriage or adoption or the reversionary interest is held by a nonprofit corporation organized under Iowa Code chapter 504A. (1938 O.A.G. 193)

f. A homestead tax credit may not be allowed upon a mobile home which is not assessed as real estate. (1962 O.A.G. 450)

g. A person occupying homestead property under a trust agreement is considered the owner of the property for purposes of the homestead tax credit. (1962 O.A.G. 434)

h. A remainder is not eligible to receive a homestead tax credit until expiration of the life estate to which such person has the remainder interest. (1938 O.A.G. 305)

i. In order for a person occupying homestead property under a contract of purchase to be eligible for a homestead tax credit, the contract of purchase must be recorded in the office of the county recorder where the property is located. A recorded memorandum or summary of the actual contract of purchase is not sufficient evidence of ownership to qualify a person for a homestead tax credit.

j. An owner of homestead property who is in the military service or confined in a nursing home, extended-care facility or hospital shall be considered as occupying the property during the period of service or confinement. The fact that the owner rents the property during the period of military service is immaterial to the granting of the homestead tax credit. (1942 O.A.G. 45) However, no homestead tax credit shall be allowed if the owner received a profit for the use of the property from another person while such owner is confined in a nursing home, extended-care facility or hospital.

k. A person owning a homestead dwelling located upon land owned by another person or entity is not eligible for a homestead tax credit. (1942 O.A.G. 160, O.A.G. 82-4-9) This rule is not applicable to a person owning a homestead dwelling pursuant to Iowa Code chapter 499B or a person owning a homestead dwelling on land owned by a community land trust pursuant to 42 U.S.C. Section 12773.

l. An heir occupying homestead property that is part of an estate in the process of administration is considered an owner of the property and is eligible for the homestead credit. (1938 O.A.G. 272)

80.1(3) *Disabled veteran's homestead tax credit.* The disabled veteran's homestead tax credit may be claimed by any person who acquired homestead property under 38 U.S.C. Sections 21.801 and 21.802 or Sections 2101 and 2102 provided the veteran's annual income and that of the veteran's spouse do not exceed $35,000. The amount of the credit is equal to the entire amount of tax payable on the homestead. Even though this financial assistance is available to disabled veterans on only one homestead during their lifetime, the credit may be claimed upon the acquisition of other homesteads for which no financial assistance is available providing all qualifications have been met.

80.1(4) *Application of credit.*

a. Except as provided in 80.1(1)*"a,"* if the homestead property is conveyed to another person prior to July 1 of any year, the new owner must file a claim for credit on or before July 1 to obtain the credit for that year. If the property is conveyed on or after July 1, the credit shall remain with the property for that year provided the previous owner was entitled to the credit. However, when the property is transferred as part of a distribution made pursuant to Iowa Code chapter 598 (Dissolution of Marriage) the transferee spouse retaining ownership and occupancy of the homestead is not required to refile for the credit.

b. A homestead tax credit may be allowed even though the property taxes levied against the homestead property have been suspended by the board of supervisors. (1938 O.A.G. 288)

c. A homestead tax credit shall not be allowed if the property taxes levied against the homestead property have been canceled or remitted by the board of supervisors. (1956 O.A.G. 78)

d. Only one homestead tax credit can be allowed per legally described tract of land. For purposes of this rule, a legally described tract of land shall mean all land contained in a single legal description. (1962 O.A.G. 435)

e. If the owner of homestead property is also eligible for a military service tax exemption and claims the exemption on the homestead property, the military service tax exemption shall be applied prior to the homestead tax credit when computing net property tax. (*Ryan v. State Tax Commission,* 235 Iowa 222, 16 N.W.2d 215)

f. If the homestead property contains two dwelling houses and one of the dwelling houses and a portion of the land is sold after a valid application for homestead tax credit has been filed, the assessor shall prorate the assessment so as to allow the seller a homestead tax credit on that portion of the property which is retained and also allow the purchaser a homestead tax credit on that portion of the property which is purchased, provided the purchaser files a valid application for homestead tax credit by July 1 of the claim year.

g. A homestead tax credit shall be allowed against the assessed value of the land on which a dwelling house did not exist as of January 1 of the year in which the credit is claimed provided a dwelling house is owned and occupied by the claimant on July 1 of that year.

h. The county treasurer shall, pursuant to Iowa Code section 25B.7, be required to extend to the claimant only that portion of the credit estimated by the department to be funded by the state appropriation.

This rule is intended to implement Iowa Code chapter 425 as amended by 2006 Iowa Acts, House File 2794.

701—80.2(22,35,426A) Military service tax exemption.

80.2(1) *Application for exemption.*

a. No military service tax exemption shall be allowed unless the first application for the military service tax exemption is signed by the owner of the property or the owner's qualified designee and filed with the city or county assessor on or before July 1 of the current assessment year (1970 O.A.G. 437). Once filed, the claim for exemption is applicable to subsequent years and no further filing shall be required provided the claimant or the claimant's spouse owns the property on July 1 of each year. The assessor, county auditor, and county board of supervisors shall act on the claim in accordance with Iowa Code section 427.6 as amended by 1999 Iowa Acts, chapter 151, section 88. A claim filed after July 1 of any calendar year applies to the following assessment year.

b. In the event July 1 falls on either a Saturday or Sunday, applications for the military service tax exemption may be filed the following Monday.

c. In the event July 1 falls on either a Saturday or Sunday, applications submitted by mail shall be accepted if postmarked on the following Monday.

d. An assessor may not refuse to accept an application for a military service tax exemption. If it is the opinion of the assessor that a military service tax exemption should not be allowed, the assessor shall accept the application for exemption and recommend disallowance.

e. If the owner of the property is on active duty in the armed forces of this state or of the United States, or is 65 years of age or older or is disabled, the application for military service tax exemption may be signed and delivered by a member of the owner's family or the owner's guardian, conservator or designated attorney-in-fact. For purposes of this rule, any person related to the owner by blood, marriage or adoption shall be considered a member of the owner's family.

80.2(2) *Eligibility for exemption.*

a. A person who was discharged from the draft is not considered a veteran of the military service and is not entitled to a military service tax exemption. (1942 O.A.G. 79)

b. A military service tax exemption shall not be allowed to a person whose only service in the military was with a foreign government. (1932 O.A.G. 242; 1942 O.A.G. 79)

c. Former members of the United States armed forces, including members of the Coast Guard, who were on active duty for less than 18 months must have served on active duty during one of the war or conflict time periods enumerated in Iowa Code Supplement section 35.1. If former members were on active duty for at least 18 months, it is not necessary that their service be performed during one of the war or conflict time periods. Former members who opted to serve five years in the reserve forces of the United States qualify if any portion of their enlistment would have occurred during the Korean

Conflict (June 25, 1950, to January 31, 1955). There is no minimum number of days a former member of the armed forces of the United States must have served on active duty if the service was performed during one of the war or conflict time periods, nor is there a minimum number of days a former member of the armed forced of the United States must have served on active duty if the person was honorablyt discharged because of a service-related injury sustained while on active duty.

Former and current members of the Iowa national guard and reserve forces of the United States need not have performed any active duty if they served at least 20 years. Otherwise, they must have been activated for federal duty, for purposes other than training, for a minimum of 90 days. Also, it is not a requirement for a member of the Iowa national guard or a reservist to have performed service within a designated war or conflict time period.

d. With the exception of members of the Iowa national guard and members of the reserve forces of the United States who have served at least 20 years and continue to serve, a military service tax exemption shall not be allowed unless the veteran has received a complete and final separation from active duty service. (*Jones v. Iowa State Tax Commission,* 247 Iowa 530, 74 N.W.2d 563, 567-1956; *In re Douglas A. Coyle,* State Board of Tax Review, No. 197, August 14, 1979; 1976 O.A.G. 44)

e. As used in Iowa Code subsection 426A.12(3), the term minor child means a person less than 18 years of age or less than 21 years of age and enrolled as a full-time student at an educational institution.

f. A veteran of more than one qualifying war period is entitled to only one military service tax exemption, which shall be the greater of the two exemptions. (1946 O.A.G. 71)

g. The person claiming a military service tax exemption must be an Iowa resident. However, the veteran need not be an Iowa resident if such person's exemption is claimed by a qualified individual enumerated in Iowa Code section 426A.12. (1942 O.A.G. 140)

h. A person who has a life estate interest in property may claim a military service tax exemption on such property. (1946 O.A.G. 155; 1976 O.A.G. 125)

i. A remainder is not eligible to receive a military service tax exemption on property to which a remainder interest is paid until expiration of the life estate. (1946 O.A.G. 155)

j. A military service tax exemption shall not be allowed on a mobile home which is not assessed as real estate. (1962 O.A.G. 450)

k. A divorced person may not claim the military service tax exemption of a former spouse who qualifies for the exemption. (Letter O.A.G. August 8, 1961)

l. A surviving spouse of a qualified veteran, upon remarriage, loses the right to claim the deceased veteran's military exemption as the surviving spouse is no longer an unremarried surviving spouse of the qualified veteran. (1950 O.A.G. 44)

m. An annulled marriage is considered to have never taken place and the parties to such a marriage are restored to their former status. Neither party to an annulled marriage can thereafter be considered a spouse or surviving spouse of the other party for purposes of receiving the military service tax exemption. (Op. Att'y. Gen. 61-8-10(L))

n. No military service tax exemption shall be allowed on property that is owned by a corporation, except for a family farm corporation where a shareholder occupies a homestead as defined in Iowa Code section 425.11(1), partnership, company or any other business or nonbusiness organization. (1938 O.A.G. 441)

o. In the event both a husband and wife are qualified veterans, they may each claim their military service tax exemption on their jointly owned property. (1946 O.A.G. 194) If property is solely owned by one spouse, the owner spouse may claim both exemptions on such property providing the nonowner spouse does not claim his or her exemption on other property.

p. No military service tax exemption shall be allowed if on July 1 of the claim year, the claimant or the claimant's unremarried surviving spouse is no longer the owner of the property upon which the exemption was claimed.

q. A person shall not be denied a military service tax exemption even though the property upon which the exemption is claimed has been pledged to another person as security for a loan. (1960 O.A.G. 263)

r. A qualified veteran who has conveyed property to a trustee shall be eligible to receive a military service tax exemption on such property providing the trust agreement gives the claimant a beneficial interest in the property. (1962 O.A.G. 434)

s. A person owning property pursuant to Iowa Code chapter 499A or 499B is eligible for a military service tax exemption. (1978 O.A.G. 78-2-5; 1979 O.A.G. 79-12-2)

t. The person claiming the exemption shall have recorded in the office of the county recorder evidence of property ownership and either the military certificate of satisfactory service or, for a current member of the Iowa national guard or a member of the reserve forces of the United States, the veteran's retirement points accounting statement issued by the armed forces of the United States or the state adjutant general. The military certificate of satisfactory service shall be considered a confidential record pursuant to Iowa Code section 22.7.

u. An heir of property that is part of an estate in the process of administration is considered an owner of the property and is eligible for the military exemption.

80.2(3) *Application of exemption.*

a. When the owner of homestead property is also eligible for a military service tax exemption and claims the exemption on the homestead property, the military service tax exemption shall be applied prior to the homestead tax credit when computing net property tax. (*Ryan v. State Tax Commission,* 235 Iowa 222, 16 N.W.2d 215)

b. If a portion of the property upon which a valid military service tax exemption was claimed is sold on or before July 1 of the year in which the exemption is claimed, the seller shall be allowed a military service tax exemption on that portion of the property which is retained by the seller on July 1. The purchaser is also eligible to receive a military service tax exemption on that portion of the property which was purchased, provided the purchaser is qualified for the exemptions and files a valid application for the exemption on or before July 1 of the claim year.

c. A military service tax exemption may be allowed even though the taxes levied on the property upon which the exemption is claimed have been suspended by the board of supervisors. (1938 O.A.G. 288)

d. A military service tax exemption shall not be allowed if the taxes levied on the property upon which the exemption is claimed have been canceled or remitted by the board of supervisors. (1956 O.A.G. 78)

e. The county treasurer shall, pursuant to Iowa Code section 25B.7, be required to extend to the claimant only that portion of the exemption estimated by the department to be funded by the state appropriation.

This rule is intended to implement Iowa Code sections 22.7, 35.1, and 35.2 and chapter 426A as amended by 2005 Iowa Acts, chapter 115, and 2006 Iowa Acts, House File 2751.

701—80.3(427) Pollution control and recycling property tax exemption.

80.3(1) To secure an exemption for pollution control or recycling property, an application must be filed with the assessing authority on or before February 1 of the assessment year for which the exemption is first claimed. It is the responsibility of the taxpayer to secure the necessary certification from the department of natural resources in sufficient time to file the application for exemption with the assessing authority on or before February 1. An exemption for new pollution control or recycling property can be secured by filing an application with the assessing authority by February 1 of the assessment year following the year in which the property is installed or constructed. If no application is timely filed in that year, the property will first qualify for exemption in any subsequent year in which an application is filed with the assessing authority on or before February 1.

80.3(2) In the event February 1 falls on either a Saturday or Sunday, applications for the exemption may be filed the following Monday.

80.3(3) In the event February 1 falls on either a Saturday or Sunday, applications submitted by mail shall be accepted if postmarked on the following Monday.

80.3(4) No exemption shall be allowed unless the application is signed by the owner of the property or the owner's qualified designee.

80.3(5) An assessor may not refuse to accept an application for a pollution control exemption if timely filed and if the necessary certification has been obtained from the department of natural resources.

80.3(6) The sale, transfer, or lease of property does not affect its eligibility for exemption as long as the requirements of Iowa Code subsection 427.1(19) and rule 701—80.3(427), Iowa Administrative Code, are satisfied.

80.3(7) No exemption shall be allowed unless the department of natural resources has certified that the primary use of the property for which the taxpayer is seeking an exemption is to control or abate air or water pollution or to enhance the quality of any air or water in this state or that the primary use of the property is for recycling. Recycling property is property used primarily in the manufacturing process and resulting directly in the conversion of waste glass, waste plastic, wastepaper products, or waste wood products into new raw materials or products composed primarily of recycled material.

80.3(8) In the event that qualified property is assessed as a unit with other property not having a pollution control or recycling function, the exemption shall be limited to the increase in the assessed valuation of the unit which is attributable to the pollution control or recycling property.

EXAMPLE

Valuation of unit with pollution control or recycling property	$100,000
Valuation of unit without pollution control or recycling property	50,000
Allowable amount of exemption	$ 50,000

80.3(9) The value of property to be exempt from taxation shall be the fair and reasonable market value of such property as of January 1 of each year for which the exemption is claimed, rather than the original cost of such property.

80.3(10) An assessor shall not exempt property from taxation without first assessing the property for taxation and subsequently receiving an application for tax exemption from the taxpayer.

This rule is intended to implement Iowa Code Supplement section 427.1(19) as amended by 2006 Iowa Acts, House File 2633, and Iowa Code sections 427.1(18) and 441.21(1)(i).

701—80.4(427) Low-rent housing for the elderly and persons with disabilities.

80.4(1) As used in Iowa Code subsection 427.1(21), the term "nonprofit organization" means an organization, no part of the net income of which is distributable to its members, directors or officers.

80.4(2) As used in Iowa Code subsection 427.1(21), the term "low-rent housing" means housing the rent for which is less than that being received or which could be received for similar properties on the open market in the same assessing jurisdiction. Federal rent subsidies received by the occupant shall be excluded in determining whether the rental fee charged meets this definition.

80.4(3) As used in Iowa Code subsection 427.1(21), the term "elderly" means any person at least 62 years of age.

80.4(4) As used in Iowa Code subsection 427.1(21), the term "persons with physical or mental disabilities" means a person whose physical or mental condition is such that the person is unable to engage in substantial gainful employment.

80.4(5) The exemption granted in Iowa Code subsection 427.1(21) extends only to property which is owned and operated, or controlled, by a nonprofit organization recognized as such by the Internal Revenue Service. Property owned and operated, or controlled, by a private person is not eligible for exemption under Iowa Code subsection 427.1(21).

80.4(6) The income of persons living in housing eligible for exemption under Iowa Code subsection 427.1(21) shall not be considered in determining the property's taxable status.

80.4(7) An organization seeking an exemption under Iowa Code subsection 427.1(21) shall file a statement with the local assessor pursuant to Iowa Code subsection 427.1(14).

80.4(8) The exemption authorized by Iowa Code subsection 427.1(21) extends only until the final payment due date of the borrower's original low-rent housing development mortgage on the property or until the borrower's original low-rent housing development mortgage is paid in full or expires, whichever

is sooner. If the original mortgage is refinanced, the exemption shall apply only until what would have been the final payment due date under the original mortgage or until the refinanced mortgage is paid in full or expires, whichever is sooner.

80.4(9) In complying with the requirements of Iowa Code subsection 427.1(14), the provisions of rule 701—78.4(427) shall apply.

80.4(10) In determining the taxable status of property for which an exemption is claimed under Iowa Code subsection 427.1(21), the appropriate assessor shall follow rules 701—78.1(427,441) to 701—78.5(427).

80.4(11) If a portion of a structure is used to provide low-rent housing units to elderly persons and persons with disabilities and the other portion is used to provide housing to persons who are not elderly or disabled, the exemption for the property on which the structure is located shall be limited to that portion of the structure used to provide housing to the elderly and disabled. Vacant units and projects under construction that are designated for use to provide housing to elderly and disabled persons shall be considered as being used to provide housing to elderly and disabled persons. The valuation exempted shall bear the same relationship to the total value of the property as the area of the structure used to provide low-rent housing for the elderly and persons with disabilities bears to the total area of the structure unless a better method for determining the exempt valuation is available. The valuation of the land shall be exempted in the same proportion.

80.4(12) The property tax exemption provided in Iowa Code subsection 427.1(21) shall be based upon occupancy by elderly or persons with disabilities as of July 1 of the assessment year. However, nothing in this subrule shall prevent the taxation of such property in accordance with the provisions of Iowa Code section 427.19.

This rule is intended to implement Iowa Code section 427.1(14) and Supplement section 427.1(21).

701—80.5(427) Speculative shell buildings.

80.5(1) *Authority of city council and board of supervisors.* A city council or county board of supervisors may enact an ordinance granting property tax exemptions for value added as a result of new construction of speculative shell buildings or additions to existing buildings or structures, or may exempt the value of an existing building or structure being reconstructed or renovated and the value of the land on which the building or structure is located, if the reconstruction or renovation constitutes complete replacement or refitting of an existing building or structure owned by community development organizations, not-for-profit cooperative associations under Iowa Code chapter 499A, or for-profit entities. See Iowa Code Supplement section 427.1(27) as amended by 2008 Iowa Acts, Senate File 2419, for definitions. The value added exemption for new construction includes reconstruction and renovation constituting complete replacement or refitting of existing buildings and structures if the reconstruction or renovation is required due to economic obsolescence, or to implement industry standards in order to competitively manufacture or process products, or to market a building or structure as a speculative shell building. The exemption for reconstruction or renovation not constituting new construction does not have to meet these requirements but has to meet only the requirements set forth in the definition of a speculative shell building. The council or board in the ordinance authorizing the exemption shall specify if the exemption will be allowed to community development organizations, not-for-profit cooperative associations under Iowa Code chapter 499B, or for-profit entities, and the length of time the exemption is to be allowed.

80.5(2) *Eligibility for exemption.* The value added by new construction, reconstruction, or renovation and first assessed prior to January 1 of the calendar year in which an ordinance authorizing a tax exemption becomes effective is not eligible for exemption. However, the value added as of January 1 of the calendar year in which the ordinance becomes effective is eligible for exemption if the ordinance is in effect on February 1 of that calendar year. This subrule does not apply to new construction projects having received prior approval. For reconstruction and renovation projects not constituting new construction, the ordinance authorizing the exemption must be in effect by February 1 of the year the project commences for the exemption to be allowable in the subsequent assessment year.

80.5(3) *Application for exemption.*

a. A community development organization, not-for-profit cooperative association, or for-profit entity must file an application for exemption with the assessor between January 1 and February 1, inclusive, of the year in which the value added for new construction is first assessed for the exemption to be allowable for that assessment year. For reconstruction and renovation projects not constituting new construction, an application for exemption must be filed by February 1 of the assessment year in which the project commences for the exemption to be allowable the following assessment year. If approved, no application for exemption is required to be filed in subsequent years for the value added exemption or the reconstruction or renovation exemption not constituting new construction. An application cannot be filed if a valid ordinance has not been enacted. If an application is not filed by February 1 of the year in which the value added for new construction is first assessed, the organization, association, or entity cannot receive, in subsequent years, the exemption for that value added. However, if the organization, association, or entity has received prior approval, the application must be filed by February 1 of the year in which the total value added for the new construction is first assessed.

b. If February 1 falls on either a Saturday or Sunday, applications for exemption may be filed the following Monday.

c. Applications submitted by mail must be accepted if postmarked on or before February 1 or, if February 1 falls on either a Saturday or Sunday, a postmark date of the following Monday is acceptable.

80.5(4) *Prior approval.* To obtain prior approval for a project, the proposal of the organization, association, or entity must be approved by a specific ordinance addressing the proposal and passed by the city council or board of supervisors. The original ordinance providing for the exemption does not constitute the granting of prior approval for a project. If an organization, association, or entity has obtained a prior approval ordinance from a city council or board of supervisors, the exemption for new construction cannot be obtained until the year in which all value added for the completed project is first assessed. Reconstruction and renovation projects constituting new construction must receive prior approval to qualify for exemption. Reconstruction and renovation projects that do not constitute new construction need not receive prior approval.

80.5(5) *Termination of exemption.* The exemption continues until the property is leased or sold, the time period for the exemption specified in the ordinance elapses, or the exemption is terminated by ordinance of the city council or board of supervisors. If the ordinance authorizing the exemption is repealed, all existing exemptions continue until their expiration and any projects having received prior approval for exemption for new construction are to be granted an exemption upon completion of the project. If the shell building or any portion of the shell building is leased or sold, the exemption for new construction shall not be allowed on that portion of the shell building leased or sold in subsequent years. If the shell building or any portion of the shell building is leased or sold, the exemption for reconstruction or renovation not constituting new construction shall not be allowed on that portion of the shell building leased or sold and a proportionate share of the land on which the shell building is located in subsequent years.

This rule is intended to implement Iowa Code Supplement section 427.1(27) as amended by 2008 Iowa Acts, Senate File 2419.

701—80.6(427B) Industrial property tax exemption.

80.6(1) *Authority of city council and board of supervisors.* A partial exemption ordinance enacted pursuant to Iowa Code section 427B.1 shall be available to all qualifying property. A city council or county board of supervisors does not have the authority to enact an ordinance granting a partial exemption to only certain qualifying properties (1980 O.A.G. 639). As used in this rule, the term "qualifying property" means property classified and assessed as real estate pursuant to 701—subrule 71.1(6), warehouses and distribution centers, research service facilities, and owner-operated cattle facilities. "Warehouse" means a building or structure used as a public warehouse for the storage of goods pursuant to Iowa Code sections 554.7101 to 554.7603, except that it does not mean a building or structure used primarily to store raw agricultural products or from which goods are sold at retail. "Distribution center" means a building or structure used primarily for the storage of goods which are

intended for subsequent shipment to retail outlets. Distribution center does not mean a building or structure used primarily to store raw agricultural products, used primarily by a manufacturer to store goods to be used in the manufacturing process, used primarily for the storage of petroleum products, or used for the retail sale of goods. A "research service facility" is one or more buildings devoted primarily to research and development activities or corporate research services. Research and development activities include, but are not limited to, the design and production or manufacture of prototype products for experimental use. A research service facility does not have as its primary purpose the providing of on-site services to the public. "Owner-operated cattle facility" means a building or structure used primarily in the raising of cattle and which is operated by the person owning the facility.

80.6(2) *Prior approval.* Only upon enactment of a partial property tax exemption ordinance in accordance with Iowa Code section 427B.1 may a city council or board of supervisors enact a prior approval ordinance for pending individual projects in accordance with Iowa Code section 427B.4. To obtain prior approval for a project, a property owner's proposal must be approved by a specific ordinance addressing the proposal and passed by the city council or board of supervisors. The original ordinance providing for the partial exemption does not constitute the granting of prior approval for a project. Also, prior approval for a project can only be granted by ordinance of the city council or board of supervisors; an official or representative of a city or county does not have the independent authority to grant prior approval for a project. If a taxpayer has obtained a prior approval ordinance from a city council or board of supervisors, the partial exemption cannot be obtained until the year in which all value added for the project is first assessed. (1980 O.A.G. 639)

80.6(3) *Repeal of ordinance.* A new construction project having received prior approval for exemption in accordance with subrule 80.6(2) shall be granted such exemption upon completion of the project even if the city council or board of supervisors subsequently repeals the ordinance passed in accordance with Iowa Code section 427B.1. (1980 O.A.G. 639)

80.6(4) *Annexation of property previously granted exemption.* A partial property tax exemption which has been granted and is in existence shall not be discontinued or disallowed in the event that the property upon which such exemption has been previously granted is located in an area which is subsequently annexed by a city or becomes subject to the jurisdiction of a county in which an ordinance has not been passed by the city council or county board of supervisors allowing such exemptions within that jurisdiction. The existing exemption shall continue until its expiration.

80.6(5) *Eligibility for exemption.*

a. The value added by new construction or reconstruction and first assessed prior to January 1 of the calendar year in which an ordinance authorizing a partial property tax exemption becomes effective, and new machinery and equipment assessed as real estate acquired and utilized prior to January 1 of the calendar year in which the ordinance or resolution becomes effective, are not eligible for exemption. However, the value added as of January 1 of the calendar year in which the ordinance becomes effective is eligible for exemption if the ordinance is in effect prior to February 1 of that calendar year and if all other eligibility and application requirements are satisfied.

EXAMPLE 1: A $1,000,000 new construction project on qualifying property is begun in July 1984. $500,000 in value of the partially completed project is completed in 1984 and first assessed as of January 1, 1985. The project is completed in 1985 adding an additional value of $500,000 which is first assessed as of January 1, 1986, bringing the total assessed value of the completed project to $1,000,000 as of the January 1, 1986, assessment.

A city ordinance authorizing the partial exemption program is passed and becomes effective January 15, 1987. This project is not eligible for a property tax exemption for any value added as a result of the new construction project.

EXAMPLE 2: Assuming the same factual situation as in Example 1, except that the ordinance authorizing the partial exemption program becomes effective on January 15, 1986, the $500,000 in assessed value added as of the January 1, 1986, assessment is eligible for the partial exemption if an application is filed with the assessor between January 1 and February 1, 1986, inclusive.

EXAMPLE 3: Assuming the same factual situation as in Example 1, except that the ordinance authorizing the partial exemption program becomes effective on February 15, 1986. Since the statutory

application filing deadline is February 1, no value added and first assessed as of January 1, 1986, is eligible for a partial exemption. The project in this example would receive no exemption for any value added as a result of the new construction.

This subrule does not apply to new construction projects having received prior approval in accordance with subrule 80.6(2).

b. New machinery and equipment assessed as real estate shall be eligible for partial exemption only if used primarily in the manufacturing process. For example, computer equipment used primarily to maintain payroll records would not be eligible for exemption, whereas computer equipment utilized primarily to control or monitor actual product assembly would be eligible.

c. If any other property tax exemption is granted for the same assessment year for all or any of the property which has been granted a partial exemption, the partial property tax exemption shall be disallowed for the year in which the other exemption is actually received.

d. Only qualifying property is eligible to receive the partial property tax exemption (O.A.G. 81-2-18).

e. A taxpayer cannot receive the partial property tax exemption for industrial machinery or equipment if the machinery or equipment was previously assessed in the state of Iowa. Industrial machinery and equipment previously used in another state may qualify for the partial exemption if all criteria for receiving the partial exemption are satisfied.

f. Industrial machinery and equipment is eligible to receive the partial property tax exemption if it changes the existing operational status other than by merely maintaining or expanding the existing operational status. This rule applies whether the machinery and equipment is placed in a new building, an existing building, or a reconstructed building. If new machinery is used to produce an existing product more efficiently or to produce merely a more advanced version of the existing product, the existing operational status would only be maintained or expanded and the machinery would not be eligible for the exemption. However, if the new machinery produces a product distinctly different from that currently produced, the existing operational status has been changed.

80.6(6) *Application for exemption.*

a. An eligible property owner shall file an application for exemption with the assessor between January 1 and February 1, inclusive, of the year for which the value added is first assessed for tax purposes. An application cannot be filed if a valid ordinance has not been enacted in accordance with Iowa Code section 427B.1 (O.A.G. 82-3-5). If an application is not filed by February 1 of the year for which the value added is first assessed, the taxpayer cannot receive in subsequent years the partial exemption for that value added (O.A.G. 82-1-17). However, if a taxpayer has received prior approval in accordance with Iowa Code section 427B.4 and subrule 80.6(2), the application is to be filed by not later than February 1 of the year for which the total value added is first assessed as the approved completed project.

b. In the event that February 1 falls on either a Saturday or Sunday, applications for the industrial property tax exemption may be filed the following Monday.

c. Applications submitted by mail shall be accepted if postmarked on or before February 1, or in the event that February 1 falls on either a Saturday or Sunday, a postmark date of the following Monday shall be accepted.

80.6(7) *Change in use of property.* If property ceases to be used as qualifying property, no partial exemption shall be allowed as of January 1 of the year following the calendar year in which the change in use takes place or for subsequent years. If property under construction ceases to be constructed for use as qualifying property, no partial exemption shall be allowed as of January 1 of the year following the calendar year in which this cessation occurs. However, such a change in the use of the property does not affect the validity of any partial exemption received for the property while it was used or under construction as qualifying property.

This rule is intended to implement Iowa Code sections 427B.1 to 427B.7.

701—80.7(427B) Assessment of computers and industrial machinery and equipment.

80.7(1) Computers and industrial machinery and equipment are to be assessed at 30 percent of the property's net acquisition cost through the 1998 assessment year, 22 percent of the net acquisition cost in the 1999 assessment year, 14 percent of the net acquisition cost in the 2000 assessment year, and 6 percent of the net acquisition cost in the 2001 assessment year. The property will be exempt from tax beginning with the 2002 assessment year.

Computers and industrial machinery and equipment acquired after December 31, 1993, and not previously assessed in Iowa, are exempt from tax.

Computers and industrial machinery and equipment assessed pursuant to Iowa Code section 427B.17 are not eligible to receive the partial property tax exemption under Iowa Code sections 427B.1 to 427B.7.

80.7(2) Computers assessed under Iowa Code section 427A.1(1)*"j"* are limited to the percent of the computer's net acquisition cost as provided in Iowa Code section 427B.17 regardless of the classification of the real estate in which the computer is located.

80.7(3) For computers and industrial machinery and equipment, the net acquisition cost shall be the acquired cost of the property.

80.7(4) Computation of taxpayer's value. Assume a machine is acquired at a net acquisition cost of $10,000. Assume also that the actual depreciated value of the machine is $9,000. The value on which taxes would be levied would be limited to $3,000 ($10,000 × .30). This percent will change over the course of the phaseout of the tax.

80.7(5) If all or a portion of the value of property assessed pursuant to Iowa Code section 427B.17 is eligible to receive an exemption from taxation, the amount of value to be exempt shall be subtracted from the net acquisition cost of the property before the taxpayer's value prescribed in Iowa Code section 427B.17 is determined. For example, if property has a net acquisition cost of $30,000 and is eligible to receive a pollution exemption for $15,000 of value, the taxable net acquisition cost would be $15,000 and the taxpayer's value would be $4,500 ($15,000 × .30). This percent will change over the course of the phaseout of the tax.

80.7(6) In the event the actual depreciated fair market value of property assessed pursuant to Iowa Code section 427B.17 is less than the valuation determined as a percent of the net acquisition cost of the property as provided in Iowa Code section 427B.17, the taxpayer's assessed value would be equal to the actual depreciated fair market value of the property.

80.7(7) Property ineligible for phaseout and exemption. Computers and industrial machinery and equipment, the taxes on which are used to fund a new jobs training project approved on or before June 30, 1995, do not qualify for the exemption provided in Iowa Code section 427B.17(2) nor the phaseout contained in Iowa Code section 427B.17(3) until the assessment year following the calendar year in which the funding obligations have been retired, refinanced, or refunded. At that time, the property will be subject to phaseout if acquired prior to January 1, 1994, or exempt from tax if acquired after December 31, 1993, and not previously assessed in Iowa. See subrule 80.7(1). The community college must notify the assessor by February 15 of each assessment year if the community college will be using a taxpayer's machinery and equipment taxes to finance a project that year. In any year in which the community college does rely on a taxpayer's machinery and equipment taxes for funding, the phaseout and exemption will not apply to that taxpayer that year.

80.7(8) County replacement.

a. For fiscal years beginning July 1, 1996, and ending June 30, 2001, the county replacement amount shall be equal to the difference between the assessed value of computers and industrial machinery and equipment as of January 1 of the previous calendar year and the assessed value of such property as of January 1, 1994, multiplied by the tax levy rate for that fiscal year. If there is an increase in valuation (the January 1, 1994, value is less), there will be no replacement for that fiscal year.

b. For fiscal years beginning July 1, 2001, and ending June 30, 2004, the county replacement amount shall be equal to the difference between the assessed value of computers and industrial machinery and equipment as of January 1 of the previous calendar year and the assessed value of such property as of January 1, 1994, less, if any, the increase in the assessed value of commercial and industrial property as of January 1 of the previous calendar year and the assessed value of such property as of January 1,

1994, multiplied by the tax levy rate for that fiscal year. If the calculation results in a negative amount, there will be no replacement for that fiscal year.

c. The replacement amounts shall be determined for each taxing district and a replacement claim summarizing the total amounts for the county prepared and submitted by the county auditor to the department of revenue by September 1 of each year. The department shall pay the replacement amount to the county treasurer in September and March of each year.

d. No replacement is allowable if a community college elects not to fund a new jobs training project with a tax on computers and industrial machinery and equipment.

This rule is intended to implement Iowa Code chapter 427B as amended by 2003 Iowa Acts, Senate File 453.

701—80.8(404) Urban revitalization partial exemption.

80.8(1) *Area designated.* An area containing only one building or structure cannot be designated as an urban revitalization area (1980 O.A.G. 786).

80.8(2) *Prior approval.* To obtain prior approval for a project, a property owner's proposal must be approved by a specific resolution addressing the proposal and passed by the city council or county board of supervisors. The original ordinance providing for the urban revitalization area does not constitute the granting of prior approval for any particular project. Also, prior approval for a project can only be granted by resolution of the city council or county board of supervisors; an official or representative of a city or county does not have the independent authority to grant prior approval for a project.

80.8(3) *Eligibility for exemption.* Improvements made as a result of a project begun more than one year prior to a city's or county's adoption of an urban revitalization ordinance are not eligible to receive the partial exemption even though some of the improvements are added during the time the area was designated as an urban revitalization area. For a project commenced within one year prior to the adoption of an urban revitalization ordinance, the partial exemption can be allowed only for those improvements constructed on or after the effective date of the ordinance. (1982 O.A.G. 358)

80.8(4) *Minimum value added.* Once the minimum value added required by Iowa Code section 404.3(7) has been assessed, any amount of additional value added to the property in subsequent years is eligible for the partial exemption. The value added subject to partial exemption for the first year for which an exemption is claimed and allowed shall include value added to the property for a previous year even if the value added in the previous year was not by itself sufficient to qualify for the partial exemption.

For example, assume that an urban revitalization project is begun on commercial property having an actual value of $50,000 as of January 1, 1984. As a result of improvements made during 1984, the actual value of the property as of January 1, 1985, is determined to be $55,000. Additional improvements made during 1985 increase the actual value of the property to $70,000 for the 1986 assessment. In this example, no partial exemption can be allowed for 1985 since the value added for that year is less than 15 percent of the actual value of the property prior to construction of the improvements. A partial exemption can be allowed for 1986 and subsequent years for the $20,000 value added in both 1985 and 1986, providing a valid application for the partial exemption is filed between January 1, 1986, and February 1, 1986, inclusive.

80.8(5) *Application for partial exemption.*

a. *Prior approval.* If a taxpayer has secured a prior approval resolution from the city council or the county board of supervisors, the partial exemption cannot be obtained until the year in which all value added for the project is first assessed. A partial exemption can be allowed only if an application is filed between January 1 and February 1, inclusive, of the year in which all value added for the project is first assessed. If an application is not filed during that period, no partial exemption can be allowed for that year or any subsequent year. The submission to the city council or the county board of supervisors of a proposal to receive prior approval does not by itself constitute an application for the partial exemption.

For example, assume a city council or county board of supervisors approves a prior approval resolution in April 1984 for a revitalization project to be completed in September 1986. Assuming all construction on the project is completed in 1986, no partial exemption can be allowed until 1987 since

that would be the year in which all value added for the project is first assessed. To receive the partial exemption, a valid application would have to be filed between January 1, 1987, and February 1, 1987, inclusive.

b. No prior approval. If a project has not received a prior approval resolution, a taxpayer has the option of receiving the partial exemption beginning with any year in which value is added to the property or waiting until all value added to the property is first assessed in its entirety. To secure a partial exemption prior to the completion of the project, an application must be filed between January 1 and February 1, inclusive, in each year for which the exemption is claimed.

For example, assume a revitalization project is begun in June 1984 and completed in September 1985, that no prior approval resolution for the project has been approved, and that a ten-year exemption period has been selected. Assume further that as a result of construction on the project, value is added for the assessment years 1985 and 1986. If an application is filed between January 1, 1985, and February 1, 1985, inclusive, a partial exemption could be allowed for the value added for 1985 beginning with the 1985 assessment and ending with the 1994 assessment. If an application is filed between January 1, 1986, and February 1, 1986, inclusive, a partial exemption could be allowed for the value added for 1986 beginning with the 1986 assessment and ending with the 1995 assessment. The partial exemption allowable for the years 1986 through 1995 would be against the value added for 1986 as a result of improvements made during calendar year 1985.

In the example above, the taxpayer may elect not to file an application for the partial exemption in 1985. In this situation, if an application is filed between January 1, 1986, and February 1, 1986, inclusive, a partial exemption could be allowed for the total value added for 1985 and 1986 and would apply to assessments for the years 1986 through 1995.

c. Filing deadline. If February 1 falls on a Saturday or Sunday, an application for the partial exemption may be filed the following Monday. Applications submitted by mail must be postmarked on or before February 1, or on or before the following Monday if February 1 falls on a Saturday or Sunday.

d. Extended filing deadline. The exemption is allowable for the total number of years in the exemption schedule if a claim for exemption is filed within two years of the original February 1 filing deadline. The city council or county board of supervisors may by resolution provide that an application for the partial exemption can be filed by February 1 of any assessment year the area is designated as an urban revitalization area. The exemption shall be allowed for the same number of years remaining in the exemption schedule selected as would have been remaining had the claim for exemption been timely filed.

80.8(6) *Value exempt.* The partial exemption allowed for a year in which an application is filed shall apply to the value added and first assessed for that year and any value added to the project and assessed for a preceding year or years and for which a partial exemption had not been received.

80.8(7) *Minimum assessment.* The partial exemption shall apply only to the value added in excess of the actual value of the property as of the year immediately preceding the year in which value added was first assessed. If the actual value of the property is reduced for any year during the period in which the partial exemption applies, any reduction in value resulting from the partial exemption shall not reduce the assessment of the property below its actual value as of January 1 of the assessment year immediately preceding the year in which value added was first assessed. This subrule applies regardless of whether the reduction in actual value is made by the assessor, the board of review, a court order, or an equalization order of the director of revenue.

80.8(8) *Value added.* As used in this rule, the term "value added" means the amount of increase in the actual value of real estate directly attributable to improvements made as part of a revitalization project. "Value added" does not include any increase in actual (market) value attributable to that portion of the real estate assessed prior to the year in which revitalization improvements are first assessed. The sales price of the property rather than the assessed value of the property may be used in determining the percentage increase required to qualify for exemption if the improvements were begun within one year of the date the property was purchased.

80.8(9) *Repeal of ordinance.* An urban revitalization project which has received proper prior approval shall be eligible to receive the partial exemption following completion of the project even if the city council or county board of supervisors subsequently repeals the urban revitalization ordinance before improvements in the project are first assessed (1980 O.A.G. 639).

This rule is intended to implement Iowa Code chapter 404 as amended by 2002 Iowa Acts, House File 2622.

701—80.9(427C,441) Forest and fruit-tree reservations.

80.9(1) *Determination of eligibility for exemption.* Property for which an application for exemption as a forest or fruit-tree reservation has been filed shall be inspected by the assessor or county conservation board. The county board of supervisors designates whether all inspections in the county are to be made by the assessor, including any city assessor, or by the county conservation board. When appropriate, aerial photographs may be used in place of an on-site inspection of the property. The assessment or exemption of the property is to be based upon criteria established by the state conservation commission and findings obtained by the inspection of the property or the examination of aerial photographs of the property.

80.9(2) *Application for exemption.*

a. An application for exemption must be filed with the appropriate assessor between January 1 and February 1, inclusive, of the assessment year for which the exemption is first claimed. If the inspection of the property is to be made by the county conservation board, the assessor shall forward the application to the board for its recommendation. Once the application has been accepted, the exemption is applicable to the current and subsequent assessment years and no further application shall be required so long as the property remains eligible for the exemption.

b. If February 1 falls on a Saturday or Sunday, an application for exemption may be filed the following Monday.

c. An application shall be considered to be timely filed if postmarked on or before February 1 or the following Monday if February 1 falls on a Saturday or Sunday.

80.9(3) *Notification to property owner.* If the property is to be inspected by the county conservation board, the board shall make every effort to submit its recommendation to the assessor in sufficient time for the assessor to notify the claimant by April 15. The assessor shall notify the claimant by April 15 of the disposition of the application for exemption. If because of the date on which an application is filed a determination of eligibility for the exemption cannot be made in sufficient time for notification to be made by April 15, the assessor shall assess the property and notify the property owner of the inability to act on the application. The notification shall contain the actual value and classification of the property and a statement of the claimant's right of appeal to the local board of review.

80.9(4) *Appeal of eligibility determination.* If a property for which a claim for exemption as a forest or fruit-tree reservation is assessed for taxation, the property owner may appeal the assessment to the board of review under Iowa Code section 441.37.

80.9(5) *Valuation of property.* For each assessment year for which property is exempt as a forest or fruit-tree reservation, the assessor shall determine the actual value and classification that would apply to the property were it assessed for taxation that year. In any year for which the actual value or classification of property so determined is changed, the assessor shall notify the property owner pursuant to Iowa Code sections 441.23, 441.26 and 441.28.

80.9(6) *Recapture tax.*

a. *Assessment of property.* If the county conservation board or the assessor determines a property has ceased to meet the eligibility criteria established by the state conservation commission, the property shall be assessed for taxation and subject to the recapture tax. The property shall be subject to taxes levied against the assessment made as of January 1 of the calendar year in which the property ceased to qualify for exemption. In addition, the property shall be subject to the tax which would have been levied against the assessment made as of January 1 of each of the five preceding calendar years for which the property received an exemption.

b. Assessment procedure. If the determination that a property has ceased to be eligible for exemption is made by the assessor by April 15, the assessor shall notify the property owner of the assessment as of January 1 of the year in which the determination is made in accordance with Iowa Code sections 441.23, 441.26, and 441.28. The assessment of the property for any of the five preceding years and for the current year, if timely notice by April 15 cannot be given, shall be by means of an omitted assessment as provided in Iowa Code section 443.6 (*Talley v. Brown,* 146 Iowa 360, 125 N.W. 243(1910)). Appeal of the omitted assessment may be taken pursuant to Iowa Code sections 443.7 and 443.8.

c. Computation of tax. The county auditor shall compute the tax liability for each year for which an assessment has been made pursuant to subrule 80.9(6), paragraph *"b."* The tax liability shall be the amount of tax that would have been levied against each year's assessment had the property not received the exemption. In computing the tax, the valuations established by the assessor shall be adjusted to reflect any equalization order or assessment limitation percentage applicable to each year's assessment.

d. Entry on tax list. The tax liability levied against assessments made as of January 1 of any year preceding the calendar year in which the property ceased to qualify for exemption shall be entered on the tax list for taxes levied against all assessments made as of January 1 of the year immediately preceding the calendar year in which the property ceased to qualify for exemption. However, if those taxes have already been certified to the county treasurer, the recapture taxes shall be entered on the tax list for taxes levied against assessments made as of January 1 of the year in which the property ceased to qualify for exemption. The tax against the assessment made as of January 1 of the year in which the property ceased to qualify for exemption shall be levied at the time taxes are levied against all assessments made as of that date.

e. Delinquencies. Recapture taxes shall not become delinquent until the time when all other unpaid taxes entered on the same tax list become delinquent.

f. Exceptions to recapture tax.

(1) Fruit-tree reservations. Property which has received an exemption as a fruit-tree reservation is not subject to the recapture tax if the property is maintained as a fruit-tree reservation for at least five full calendar years following the last calendar year for which the property was exempt as a fruit-tree reservation.

(2) Property which has been owned by the same person or the person's direct descendants or antecedents for at least ten years prior to the time the property ceases to qualify for exemption shall not be subject to the recapture tax.

(3) Property described in subparagraphs 80.9(6)*"f"*(1) and 80.9(6)*"f"*(2) is subject to assessment as of January 1 of the calendar year in which the property ceases to qualify for exemption.

This rule is intended to implement Iowa Code chapter 427C as amended by 2001 Iowa Acts, House File 736, and Iowa Code section 441.22.

701—80.10(427B) Underground storage tanks.

80.10(1) *Authority of city councils and county boards of supervisors.* A city council or county board of supervisors may provide by ordinance to grant property tax credits to small business owners for payment of underground storage tank cleanup costs. The ordinance is to designate the period of time over which the credit is to be granted (not to exceed ten years) and the percentage of credit to be granted each year. If the ordinance is repealed, existing credits are to continue through their designated expiration date. A small business means a business with gross receipts of less than $500,000 per year.

80.10(2) *Application for credit.* The small business owner is required to file an application for credit with the respective city council or county board of supervisors by September 30 of the year following the calendar year in which cleanup costs were paid and each succeeding year the credit is applicable. The application for credit shall be prescribed by the director of revenue and shall contain, but not be limited to, the small business owner's cleanup costs and gross receipts for the most recent tax year.

80.10(3) *Allowance of credit.* Credits granted by a county board of supervisors are applicable only to property located outside the corporate limits of a city and credits granted by a city council are only applicable to property located within the corporate limits of the city. The amount of the credit granted

cannot exceed the small business owner's cleanup costs nor the amount of city or county taxes paid on the property where the underground storage tank is located for any fiscal year the credit is applicable. Upon approval of the application for credit, the city council or county board of supervisors shall direct its city clerk or county treasurer to reimburse the small business owner in the amount of the designated credit.

This rule is intended to implement Iowa Code sections 427B.20 to 427B.22.

701—80.11(425A) Family farm tax credit.

80.11(1) *Eligibility for credit.* Generally, the family farm tax credit is only intended to benefit tracts of agricultural land that are owned by certain individuals or enumerated legal entities if the owner or other specified persons are actively engaged in farming.

a. In order for a tract of land to qualify for the family farm tax credit, the following three criteria must be satisfied:

(1) The tract of land must be an "eligible tract of agricultural land" as defined in Iowa Code subsection 425A.2(5). This means the tract must be ten acres or more or contiguous to a tract of more than ten acres and used in good faith for agricultural or horticultural purposes. More than half of the acres in the tract must be devoted to the production of crops or livestock by a designated person. Contiguous tracts under the same legal ownership and located within the same county are considered one tract. Only tracts of land that are classified as agricultural real estate qualify for the credit.

(2) The tract of land must be owned by:

1. An individual or persons related or formerly related to each other, or
2. A partnership where all the partners are related or formerly related to each other, or
3. A family farm corporation as defined in Iowa Code subsection 9H.1(8), or
4. An authorized farm corporation as defined in Iowa Code subsection 9H.1(3).

The ownership criteria must be met on June 30 of the fiscal year prior to the fiscal year in which the application for credit is filed. For example, the ownership criteria must be met on June 30, 1990, for applications for credit filed in 1990.

(3) A designated person must be "actively engaged in farming" the tract during the fiscal year prior to the fiscal year in which the application for credit is filed. If the tract is owned by an individual or related persons, the designated person who is actively engaged in farming must be an owner of the tract, the owner's spouse, or the owner's relative within the third degree of consanguinity or their spouses. This includes the owner's child, stepchild, grandchild, great-grandchild, parent, grandparent, great-grandparent, brother, sister, uncle, aunt, niece, or nephew or their spouses. The only step relative that may qualify as a designated person is a stepchild. If the owner of the tract is a partnership, the designated person who is actively engaged in farming must be a partner or a partner's spouse. If the owner of the tract of land is a family farm corporation, the designated person who is actively engaged in farming must be a family member who is a shareholder of the family farm corporation or the shareholder's spouse. If the owner of the tract of land is an authorized farm corporation, the designated person who is actively engaged in farming must be the shareholder who owns at least 51 percent of the stock of the authorized farm corporation or that shareholder's spouse.

If the owner is an individual who leases the land to a family farm corporation or partnership, a shareholder of the corporation or a partner of the partnership shall be considered a designated person if the combined stock of the family farm corporation or the combined partnership interest owned by the owner, the owner's spouse and persons related to the owner within the third degree of consanguinity and their spouses is equal to at least 51 percent of the stock of the family farm corporation or the ownership interest in the partnership.

b. In order to be "actively engaged in farming" the designated person must be personally involved in the production of crops or livestock on the "eligible tract" on a regular, continuous and substantial basis. Personal involvement in the production of crops or livestock includes not only field activities such as soil preparation and testing, planting, fertilizing, spraying, inspecting, cultivating and harvesting but also managerial decision-making activities relating to hybrid selection, crop rotation planning, crop selection, equipment purchases and marketing strategies. Personal involvement in the production of

crops or livestock also includes activities pertaining to crop insurance selection, loan selection, and financial record maintenance and preparation. A person performing activities in the capacity of a lessor, whether under a cash or crop-share lease and whether under a written or oral lease, is not actively engaged in farming on the area of the tract covered by the lease.

c. Tracts subject to a federal program pertaining to agricultural land. In lieu of satisfying the "actively engaged in farming" test, a designated person may demonstrate that the person was in general control of the tract which was subject to a federal program pertaining to agricultural land during the prior fiscal year. This alternative test is intended to apply in circumstances where the active farming criteria cannot be met because the land is in the Conservation Reserve Program (commonly referred to as the CRP) or a program substantially similar to the 0/92 option where the tract has been taken out of production.

d. The following examples illustrate family farm tax credit eligibility under various circumstances:

EXAMPLE 1. A and B jointly own land and were both personally involved in the farming operation. They are not related. No credit is allowable because it is a requirement that individual owners be related. If A and B were brothers, the land would qualify for the credit.

EXAMPLE 2. A owns the land and is retired. A leased the land to B, his son. B was personally involved in the farming operation. The land is eligible for the credit even though a lease arrangement existed because the actively engaged in farming requirement can be satisfied through the activities of the owner's spouse, or the owner's relative within the third degree of consanguinity or the relative's spouse. See paragraph *"a,"* subparagraph (3), of this subrule. No credit would be allowable if A and B were not related.

EXAMPLE 3. A owns two contiguous 40-acre tracts. A farmed all of one tract but only 15 acres of the other tract. The other 25 acres of the second tract were leased to a nondesignated person. Both tracts qualify for the credit because contiguous tracts under the same legal ownership are considered one tract and more than half of the total of 80 acres (40 + 15 = 55) were farmed by A.

EXAMPLE 4. The land is owned by a partnership in which the partners A, B, C and D are brothers. A and B farm the land but C and D have no involvement in the farming operation. The land is eligible for the credit because it makes no difference what level of involvement each partner had nor does it matter that one or more of the partners were not personally involved in the farming operation. The only requirement for qualifying for the credit is that at least one of the partners or one of the partners' spouses was personally involved in the farming operation. No credit would be allowable if all the partners were not related to each other.

EXAMPLE 5. The land is owned by a family farm corporation in which the stock is owned equally by A, B and C. A and B are brothers but not related to C. All three partners were personally involved in the farming operation. The land qualifies for the credit because it is only a requirement that a family member who is a shareholder in the family farm corporation be involved in the farming operation. The land would qualify for the credit even if B was not involved in the farming operation. However, no credit would be allowable if only C was involved in the farming operation.

EXAMPLE 6. The land is owned by an authorized farm corporation in which 60 percent of the stock is owned by A and 40 percent of the stock is owned by B. Both A and B were personally involved in the farming operation. The credit is allowable as long as the stockholder who owns at least 51 percent of the stock was personally involved in the farming operation. No credit would be allowable if A was not personally involved in the farming operation.

80.11(2) *Application for credit.* To obtain the credit, the owner must file an application for credit with the assessor by November 1. If the claim for credit is approved, no further filing shall be required provided the ownership and the designated person actively engaged in farming the property remain the same during successive years. A new application for credit shall be required only if the property is sold or the designated person changes. The county board of supervisors shall review all claims and make a determination as to eligibility. The claimant may appeal a decision of the board to district court by giving written notice to the board within 20 days of the board's notice.

80.11(3) *Application of credit.* The county auditor shall certify to the department of revenue by April 1 the total amount of family farm tax credits due the county. The county auditor shall apply the credit to

each eligible tract of land in an amount equal to the school district tax rate which is in excess of $5.40 multiplied by the taxable value of the eligible tract.

80.11(4) *Penalty.* The owner shall provide written notice to the assessor if the designated person changes. Failure to do so shall result in the owner's being liable for the amount of the credit plus a penalty equal to 5 percent of the amount of the credit granted.

This rule is intended to implement Iowa Code chapter 425A as amended by 2001 Iowa Acts, House Files 712 and 713.

701—80.12(427) Methane gas conversion property.

80.12(1) *Application for exemption.* An application for exemption is required to be filed with the appropriate assessing authority by February 1 of each year. The assessed value of the property is to be prorated to reflect the appropriate amount of exemption if the property used to convert the methane gas to energy also uses another fuel. The first year exemption shall be equal to the estimated ratio that the methane gas consumed bears to the total fuel consumed times the assessed value of the property. The exemption for subsequent years shall be based on the actual ratio for the previous year.

80.12(2) *Eligibility for exemption.* To qualify for exemption, the property must be used in connection with a publicly owned sanitary landfill to collect methane gas or other gases produced as a byproduct of waste decomposition and convert the gas to energy or to collect waste that will be used to produce methane gas or other gases for conversion into energy. The property used to decompose the waste and convert the waste to gas is not eligible for the exemption.

This rule is intended to implement Iowa Code section 427.1(29) as amended by 2001 Iowa Acts, Senate File 520.

701—80.13(427B) Wind energy conversion property.

80.13(1) *Property that does not qualify for the wind energy production tax credit.* A city council or county board of supervisors may provide by ordinance for the special valuation of wind energy conversion property. If the ordinance is repealed, the special valuation applies through the nineteenth assessment year following the first year the property was assessed. The special valuation applies to property first assessed on or after the effective date of the ordinance. The local assessor shall value the property in accordance with the schedule provided in Iowa Code section 427B.26(2). Public utility property qualifies for special valuation provided the taxpayer files a declaration of intent with the local assessor by February 1 of the assessment year the property is first assessed for tax to have the property locally assessed.

80.13(2) *Property that qualifies for the wind energy production tax credit.* The wind energy production tax credit applies to electrical production facilities placed in service on or after July 1, 2005, but prior to July 1, 2008. These facilities are to be assessed by the department of revenue for a period of 12 years, and the taxes payable on the facilities are to be paid to the department at the same time as regular property taxes. The owner of the facility shall file an annual report with the department by May 1 of each year during the 12-year assessment period, and the department shall certify the assessed value of the facility by November 1 of each year to the county auditor. The board of supervisors shall notify the county treasurer to state on the tax statement that the property taxes are to be paid to the department of revenue. The board shall also notify the department of those facilities that are required to pay the property taxes to the department. The department of revenue shall notify the county treasurer of the date the taxes were paid within five business days of receipt, and the notification shall authorize the county treasurer to mark the record as paid in the county system.

This rule is intended to implement Iowa Code section 427B.26 and Supplement chapter 476B.

701—80.14(427) Mobile home park storm shelter.

80.14(1) *Application for exemption.* An application for exemption must be filed with the assessing authority by February 1 of the first year the exemption is requested. Applications for exemption are not required in subsequent years if the property remains eligible for exemption.

80.14(2) *Eligibility for exemption.* The structure must be located in a mobile home park as defined in Iowa Code section 435.1.

80.14(3) *Valuation exempted.* If the structure is used exclusively as a storm shelter, it shall be fully exempt from taxation. If the structure is not used exclusively as a storm shelter, the exemption shall be limited to 50 percent of the structure's commercial valuation.

This rule is intended to implement Iowa Code Supplement section 427.1(30).

701—80.15(427) Barn and one-room schoolhouse preservation. The increase in value added to a farm structure constructed prior to 1937 or one-room schoolhouse as a result of improvements made is exempt from tax. An application must be filed with the assessor by February 1 of the first assessment year only and the exemption is to continue as long as the structure continues to be used as a barn or in the case of a one-room schoolhouse is not used for dwelling purposes. A "barn" is an agricultural structure that is used for the storage of farm products or feed or the housing of farm animals, poultry, or farm equipment.

This rule is intended to implement Iowa Code sections 427.1(31) and 427.1(32) as amended by 2000 Iowa Acts, House File 2560.

701—80.16(426) Agricultural land tax credit.

80.16(1) *Eligibility for credit.* The credit shall be allowed on land in tracts of ten acres or more, or land of less than ten acres if part of other land of more than ten acres, and used for agricultural or horticultural purposes.

80.16(2) *Application for credit.* No application for credit is required.

80.16(3) *Application of credit.* The county auditor shall certify to the department of revenue by April 1 the total amount of agricultural land tax credits due the county. The county auditor shall apply the credit to each eligible tract of land in an amount equal to the school district tax rate which is in excess of $5.40 multiplied by the taxable value of the eligible tract.

This rule is intended to implement Iowa Code chapter 426 as amended by 2001 Iowa Acts, House File 713.

701—80.17(427) Indian housing property. Property owned and operated by an Indian housing authority, as defined in 24 CFR 950.102, is exempt from taxation provided the exemption has been approved by the city council or county board of supervisors, whichever is applicable, and a valid claim for exemption has been filed pursuant to Iowa Code section 427.1(14) by February 1.

This rule is intended to implement Iowa Code section 427.1 as amended by 2001 Iowa Acts, Senate File 449.

701—80.18(427) Property used in value-added agricultural product operations. Fixtures used for cooking, refrigeration, or freezing of value-added agricultural products used in value-added agricultural processing or used in direct support of value-added agricultural processing are exempt from tax. Direct support includes storage by public refrigerated warehouses for processors of value-added agricultural products prior to the start of the value-added agricultural processing operation. The exemption does not apply to fixtures used primarily for retail sale or display. If the taxpayer is a retailer, there is a presumption that the fixtures are being used primarily for retail sale or display. The exemption applies only to fixtures that are attached in a manner set forth in Iowa Code section 427A.1(2).

The following definitions apply to this rule:

"Fixture" means property which was originally personal property but which by being physically attached to the realty becomes part of the realty and upon removal does not destroy the property to which it is attached.

"Value-added agricultural processing" means an operation whereby an agricultural product is subjected to some special treatment by artificial or natural means which changes its form, context, or condition, and results in a marketable agricultural product to be sold at retail. These operations are commonly associated with fabricating, compounding, germinating, or manufacturing.

"Value-added agricultural product" means an agricultural product which, through a series of activities or processes, may be sold at a higher price than its original purchase price.

This rule is intended to implement Iowa Code section 427A.1 as amended by 2001 Iowa Acts, House File 715.

701—80.19(427) Dwelling unit property within certain cities. Dwelling unit property owned and managed by a nonprofit community housing development organization that owns and manages more than 150 dwelling units in a city with a population of more than 110,000 is exempt from tax. The organization must be recognized by the state and the federal government pursuant to criteria contained in the HOME program of the federal National Affordable Housing Act of 1990 and must be exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code. The exemption does not extend to dwelling units located outside the city. The organization must file an application for exemption with the assessing authority not later than February 1 of the assessment year. Applications for exemption are not required in successive years if the property continues to qualify for the exemption.

This rule is intended to implement Iowa Code Supplement section 427.1(21A) as amended by 2006 Iowa Acts, House File 2792.

701—80.20(427) Nursing facilities. If the assessor determines that property is being used for a charitable purpose pursuant to Iowa Code section 427.1(8), it shall be fully exempt from tax if it is licensed under Iowa Code section 135C.1(13) by the department of inspections and appeals, exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, and a valid application for exemption has been filed with the assessor by February 1 of the assessment year.

This rule is intended to implement Iowa Code Supplement section 427.1(14).

701—80.21(368) Annexation of property by a city. A city council may provide a partial tax exemption from city taxes against annexed property for a period of ten years. The exemption schedule is contained in Iowa Code Supplement section 368.11(3)*"m."* All property owners included in the annexed area must receive the exemption if the city elects to allow the exemption.

This rule is intended to implement Iowa Code Supplement section 368.11(3)*"m"* as amended by 2006 Iowa Acts, House File 2794.

701—80.22(427) Port authority. The property of a port authority created pursuant to Iowa Code Supplement section 28J.2 when devoted to public use and not held for pecuniary profit is exempt from taxation.

This rule is intended to implement Iowa Code Supplement section 427.1(34).

701—80.23(427A) Concrete batch plants and hot mix asphalt facilities. A concrete batch plant includes the machinery, equipment, and fixtures used at a concrete mixing facility to process cement dry additive and other raw materials into concrete. A hot mix asphalt facility is any facility used to manufacture hot mix asphalt by heating and drying aggregate and mixing it with asphalt cements. These facilities shall not be assessed and taxed as real property regardless of the property's attachment to real estate. The land on which the facilities are located is taxable.

This rule is intended to implement Iowa Code section 427A.1 as amended by 2006 Iowa Acts, Senate File 2391.

701—80.24(427) Airport property. Property owned by a city or county at an airport and leased to a fixed base operator providing aeronautical services to the public is exempt from taxation.

This rule is intended to implement Iowa Code section 427.1(2) as amended by 2006 Iowa Acts, House File 2794.

701—80.25(427A) Car wash equipment. Property that is equipment used for the washing, waxing, drying, or vacuuming of motor vehicles and point-of-sale equipment necessary for the purchase of car wash services shall not be assessed and taxed as real property.

This rule is intended to implement Iowa Code section 427A.1 as amended by 2006 Iowa Acts, House File 2794.

701—80.26(427) Web search portal property. This exemption includes cooling systems, cooling towers, and other temperature control infrastructure; all power infrastructure for transformation, distribution, or management of electricity used for the maintenance and operation of the web search portal, including but not limited to exterior dedicated business-owned substations; back-up power generation systems, battery systems, and related infrastructure; and racking systems, cabling, and trays, which are necessary for the maintenance and operation of the web search portal. The exemption does not apply to land, buildings, and improvements or power distribution systems subject to assessment under Iowa Code chapter 437A. The web search portal business must meet the requirements contained in Iowa Code section 423.3, subsection 92 or subsection 93, for the exemption to be allowable. The owner of the property must file a claim for exemption with the assessor by February 1 of the first year the exemption is claimed. Claims for exemption in successive years shall be required only for property additions.

This rule is intended to implement Iowa Code Supplement section 427.1(35) and 2008 Iowa Acts, House File 2233, section 2.

701—80.27(427) Privately owned libraries and art galleries. Claims for exemption for libraries and art galleries owned and kept by private individuals, associations, or corporations for public use and not for private profit must be filed with the local assessor by February 1 of the first year the exemption is requested. Once the exemption is granted, the exemption shall continue to be granted for subsequent assessment years without further filing of claims as long as the property continues to be used as a library or art gallery for public use and not for private profit.

This rule is intended to implement Iowa Code Supplement section 427.1(7) as amended by 2008 Iowa Acts, Senate File 2400.

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◊ Two or more ARCs

TITLE X
CIGARETTES AND TOBACCO

CHAPTER 81
ADMINISTRATION

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

701—81.1(453A) Definitions. As used in this title the following definitions apply:

"Bank" means a bank designated and authorized by the director of revenue to sell cigarette stamps and set cigarette meters.

"Carton" means a box or container of any kind in which ten or more packages or packs of cigarettes or tobacco products are offered for sale, sold, or otherwise distributed to consumers.

"Cigarette licensee" means any person who has or is required to obtain a permit of any kind under Iowa Code chapter 453A, division I.

"Counterfeit cigarettes" means cigarettes, packages of cigarettes, cartons of cigarettes or other containers of cigarettes with a label, trademark, service mark, trade name, device, design, or word adopted or used by a cigarette manufacturer to identify its product that is false or used without authority of the cigarette manufacturer.

"Department" means the Iowa department of revenue.

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

"License" and *"permit"* are used interchangeably.

"Licensee" means any person holding or required to obtain a permit or license of any kind under Iowa Code chapter 453A.

"Meter settings" means Iowa cigarette meters which imprint indicia on cigarette packages.

"Package" or *"pack"* means a container of any kind in which cigarettes or tobacco products are offered for sale, sold, or otherwise distributed to consumers.

"Revenue" means any evidence of tax on cigarettes required by the department to be affixed to individual packages of cigarettes.

"Stamps" means Iowa Fuson stamps, 30,000 to a roll and Iowa hand stamps of any quantity authorized by the director to be applied to packages of cigarettes and little cigars.

"Supplier" means any person or firm authorized to manufacture or supply cigarette stamps for the department.

"Tax" means the tax imposed under Iowa Code chapter 453A on cigarettes or other tobacco products.

"Taxpayer" means any person required to collect or remit tax directly to the department or required to be licensed or to file any report or return or keep records under Iowa Code chapter 453A.

"Tobacco" means the same as "tobacco products" as defined in Iowa Code section 453A.42.

"Tobacco licensee" means any person who has or is required to obtain a permit of any kind under Iowa Code chapter 453A, division II.

In addition to these definitions, the definitions contained in Iowa Code sections 421B.2, 453A.1, and 453A.42 apply to these rules.

This rule is intended to implement Iowa Code chapter 453A as amended by 2004 Iowa Acts, Senate File 2296.

701—81.2(453A) Credentials and receipts. Employees of the department have official credentials and the taxpayer should require proof of the identity of any person claiming to represent the department. No charges shall be made nor gratuities of any kind accepted by an employee of the department for assistance given in or out of the office of the department.

All employees authorized to collect money are supplied with official receipt forms. When cash is paid to an employee, the taxpayer should require the employee to issue an official receipt. Such receipt shall show the taxpayer's name, address and permit number; the purpose for the payment; and the amount of the payment. The taxpayer should retain all receipts, and only official receipts for a cash payment will be recognized by the department.

This rule is intended to implement Iowa Code sections 453A.25 and 453A.49.

701—81.3(453A) Examination of records. Within three years after a return or report is filed or within three years after the report or return became due, whichever is later, the department shall examine it, determine the amount of cigarette or tobacco tax due, and give notice of assessment to the taxpayer. If no return or report has been filed, the department may determine the amount of tax due and give notice thereof. The period of examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent report or return made with the intent to evade tax, or in the case of a failure to file a report or return, or if a person purchases or is in possession of unstamped cigarettes. The three-year period of limitation may be extended by a taxpayer by signing a waiver agreement form provided by the department. The agreement must stipulate the period of extension and the tax period to which the extension applies and must provide that a claim for refund may be filed at any time during the period of extension.

Whenever books and records are examined by an employee designated by the director, whether to verify a return, report, or claim for refund or in making an audit, an assessment will be issued for any amount of tax due or a refund made for any amount of tax overpaid.

This rule is intended to implement Iowa Code sections 453A.15, 453A.28, and 453A.46 as amended by 2004 Iowa Acts, Senate File 2296.

701—81.4(453A) Records. Every taxpayer subject to the provisions of Iowa Code chapter 453A shall keep, preserve, and make available to the department records for a period of three years. The following is a list of records subject to the provisions of this rule. For taxpayers using an electronic data interchange process or technology, also see 701—subrule 11.4(4).

81.4(1) *Cigarette manufacturer.* Licensed cigarette manufacturers are required to keep the following records.

a. Records, including invoices, showing the sale of cigarettes in Iowa or the sale of cigarettes for shipment into Iowa.

b. Records evidencing the transportation of cigarettes into Iowa.

c. Records, including invoices, showing all sales of cigarettes to licensees.

d. A record of all stamps purchased.

e. Copies of all reports filed with the department.

Unlicensed cigarette manufacturers shipping cigarettes into Iowa are asked to keep records, including invoices, showing the sale of cigarettes in Iowa or the sale of cigarettes for shipment into Iowa.

Nothing in this rule shall be construed to affect the provisions of P.L. 95-575 (Contraband Cigarette Act, 18 USC Ch. 114) or P.L. 81-363 (Jenkins Act, 15 USC, Sec. 375).

81.4(2) *Cigarette distributing agent.*

a. Records of the receipt of all cigarettes showing the amount of cigarettes received and from whom received.

b. Records of all distribution of cigarettes showing the amount of cigarettes shipped, to whom and at whose direction the cigarettes were distributed.

c. Records showing all exports of cigarettes.

d. Copies of all reports filed with the department.

e. Detailed inventory records.

f. Freight receiving and shipping records.

81.4(3) *Cigarette distributors.*

a. Records, including invoices, showing the purchase of all cigarettes sold, used or stored in Iowa.

b. Records, including invoices, showing the sale of cigarettes in Iowa.

c. Detailed inventory records.

d. Freight receiving and shipping records.

e. A record of all stamps purchased.

f. Copies of all reports filed with the department.

81.4(4) *Wholesaler.*

a. Records, including invoices, evidencing the purchase of all cigarettes.

b. Records, including invoices, evidencing the sale of all cigarettes.

c. Detailed inventory records.

81.4(5) *Cigarette vendor.*

a. Records, including invoices, evidencing the purchase of all cigarettes.

b. Records evidencing the sale of cigarettes.

c. Inventory records.

d. Records of all cigarette vending machines owned, furnished, installed, serviced, operated or maintained by the vendor and the location of each.

81.4(6) *Cigarette retailer.*

a. Records, including invoices, evidencing the purchase of all cigarettes.

b. Inventory records.

81.4(7) *Tobacco distributor.* The same records as a cigarette distributor but with respect to tobacco, excluding records of stamps purchased. (See 81.4(3))

81.4(8) *Tobacco subjobber.* The same records as a cigarette wholesaler but with respect to tobacco.

81.4(9) *Tobacco retailer.* The same records as a cigarette retailer but with respect to tobacco.

81.4(10) *Common carrier engaged in transporting cigarettes or tobacco products into Iowa.*

a. Copies of bills of lading or manifests as to each transportation of cigarettes or tobacco.

b. Log book or trip sheets.

81.4(11) *Microfilm and related records system.* Microfilm, microfiche, COM (computer on machine) and other related reduction in storage systems will be referred to as "microfilm" in this rule.

Microfilm reproductions of general books of account, such as a cash book, journals, voucher registers, ledgers, etc., are not acceptable other than those that have been approved by the Internal Revenue Service under Revenue Procedure 76-43, Section 302. However, microfilm reproductions of supporting records of detail, such as sales invoices, purchase invoices, credit memoranda, etc., may be allowed providing all the following conditions are met and accepted by the taxpayer.

a. Appropriate facilities are provided to ensure the preservation and readability of the films.

b. Microfilm rolls are indexed, cross-referenced, labeled to show beginning and ending numbers or beginning and ending alphabetical listing of documents included, and are systematically filed.

c. The taxpayer agrees to provide transcripts of any information contained on microfilm which may be required for purposes of verification of tax liability.

d. Proper facilities are provided for the ready inspection and location of the particular records, including modern projectors for viewing and for the copying of records.

e. Any audit of "detail" on microfilm may be subject to sample audit procedures, to be determined at the discretion of the director or the director's designated representative.

f. A posting reference must be on each invoice.

g. Credit memoranda must carry a reference to the document evidencing the original transaction.

h. Documents necessary to support claimed exemptions from tax liability, such as bills of lading and purchase orders, must be maintained in an order by which they readily can be related to the transaction for which exemption is sought.

81.4(12) *Automatic data processing records.* Automatic data processing is defined in this rule as including electronic data processing (EDP) and will be referred to as ADP.

a. An ADP tax accounting system must have built into its program a method of producing visible and legible records which will provide the necessary information for verification of the taxpayer's tax liability.

b. ADP records must provide an opportunity to trace any transaction back to the original source or forwarded to a final total. If detail printouts are not made of transactions at the time they are processed, then the system must have the ability to reconstruct these transactions.

c. A general ledger with source references will be produced as hard copy to coincide with financial reports of tax reporting periods. In cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers should also be produced periodically.

d. Supporting documents and audit trail. The audit trail should be designed so that the details underlying the summary accounting data may be identified and made available to the director or the director's designated representative upon request. The system should be so designed that the supporting

documents, such as sales invoices, purchase invoices, credit memoranda, etc., are readily available. (An audit trail is defined as the condition of having sufficient documentary evidence to trace an item from source (invoice, check, etc.) to a financial statement or tax return; or the reverse; that is, to have an auditable system.)

e. Program documentation. A description of the ADP portion of the accounting program should be available. The statements and illustrations as to the scope of operations should be sufficiently detailed to indicate:

(1) The application being performed;

(2) The procedure employed in each application (which, for example, might be supported by flow charts, block diagrams or other satisfactory description of the input or output procedures); and

(3) The controls used to ensure accurate and reliable processing. Program and systems changes, together with their effective dates should be noted in order to preserve an accurate chronological record.

f. Storage of ADP output will be in appropriate facilities to ensure preservation and readability of output.

81.4(13) *General requirements.* If a tax liability has been assessed and an appeal is pending to the department, state board of tax review or district or supreme court, books, papers, records, memoranda or documents specified in this rule which relate to the period covered by the assessment shall be preserved until the final disposition of the appeal.

The records will be considered inadequate when the requirements of this rule are not met. The director may, by express order in certain cases, authorize permit holders to keep their records in a manner and upon forms other than those so prescribed (agreements must be in writing).

81.4(14) *Other persons.* The director may require any person other than those previously listed in this rule to maintain books and records as deemed necessary by the director.

This rule is intended to implement Iowa Code sections 453A.15 and 453A.45 as amended by 2004 Iowa Acts, Senate File 2296, and Iowa Code sections 453A.18, 453A.19, 453A.24, and 453A.49.

701—81.5(453A) Form of invoice. Whenever an invoice is required to be prepared or kept by Iowa Code chapter 453A or these rules, it shall minimally contain the following information:

1. The seller's name, address.
2. The purchaser's name, address and permit number (if any).
3. The date of sale.
4. All prices and discounts stated separately.
5. An indication as to whether cigarettes or tobacco products are being sold with or without tax stamps attached or tax included.
6. The origination and destination points.

This rule is intended to implement Iowa Code sections 453A.15, 453A.25, 453A.45 and 453A.49.

701—81.6(453A) Audit of records—cost, supplemental assessments and refund adjustments. The department shall have the right and duty to examine or cause to be examined the books, records, memoranda or documents of a taxpayer for the purpose of verifying the correctness of a return or report filed or determining the tax liability of any taxpayer under Iowa Code chapter 453A.

When it is determined, upon audit, that any person dealing in cigarettes owes additional tax, the costs of the audit are assessed against such person as additional penalty.

The department may, at any time within the period prescribed for assessment or refund adjustment, make a supplemental assessment or refund adjustment whenever it is ascertained that any assessment or refund adjustment is imperfect or incomplete in any respect.

If an assessment or refund adjustment is appealed (protested under rule 701—7.41(17A)) and is resolved whether by informal proceedings or by adjudication, the department and the taxpayer are precluded from making a supplemental assessment or refund adjustment concerning the same issue involved in such appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation.

This rule is intended to implement Iowa Code section 453A.30.

701—81.7(453A) Bonds. When bonds are required by Iowa Code chapter 453A or these rules, said bonds shall be in the form of cash, a certificate of deposit or a bond issued by a surety company licensed to do business in the state of Iowa, payable to the state of Iowa and in a form approved by the director. Bonds required by tobacco distributors must be issued by a surety company licensed to do business in Iowa. However, upon approval by the director, a cash bond or a certificate of deposit will be accepted by the department as a substitute for the surety bond. (See Iowa Code section 453A.44(4).)

This rule is intended to implement Iowa Code sections 453A.14 and 453A.44.

701—81.8(98) Penalties. Renumbered as 701—10.76(98), IAB 1/23/91.

701—81.9(98) Interest. Renumbered as 701—10.77(98), IAB 1/23/91.

701—81.10(98) Waiver of penalty or interest. Renumbered as 701—10.78(98), IAB 1/23/91.

701—81.11(453A) Appeal—practice and procedure before the department.

81.11(1) *Procedure.* The practice and procedure before the department is governed by Iowa Code chapter 17A and 701—Chapter 7 of the department's rules.

81.11(2) *Appeals—time limitations.* For assessments or denials of refund claims made on or after July 1, 1987. An assessment or denial of all or any portion of a refund claim issued pursuant to Iowa Code section 453A.28 or 453A.46 may be appealed pursuant to rule 701—7.41(17A) and the protest must be filed within 30 days of the issuance of the assessment or denial of the refund claim. For notices of assessment or refund denial issued on or after January 1, 1995, the department will consider a protest to be timely filed if filed no later than 60 days following the date of the assessment notice or refund denial, or if a taxpayer failed to timely appeal a notice of assessment, the taxpayer may make payment pursuant to rule 701—7.41(17A) and file a refund claim within the period provided by law for filing such claims.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 453A.25, 453A.28, 453A.29, 453A.46, 453A.48, and 453A.49.

701—81.12(453A) Permit—license revocation.

81.12(1) *Cigarette permits.* Cigarette permits issued by the department must be revoked if the permittee willfully violates the provisions of Iowa Code section 453A.2 (sale or gift to minors). The department may revoke permits issued by the department for violation of any other provision of division I of Iowa Code chapter 453A or the rules promulgated thereunder. (Also see Iowa Code chapter 421B and rule 701—84.7(421B).) The revocation shall be subject to the provisions of rule 701—7.55(17A). The notice of revocation shall be given to the permittee at least ten days prior to the hearing provided therein. The department will revoke a permit of a permit holder, who is an individual, if the department has received a certificate of noncompliance from the child support unit in regard to the permit holder, unless the unit furnishes the department with a withdrawal of the certificate of noncompliance.

If a retailer or employee of a retailer has violated Iowa Code section 453A.2 or 453A.36(6), the city council, county board of supervisors, or the Iowa department of public health shall assess a penalty as provided in Iowa Code section 453A.22(2) as amended by 2003 Iowa Acts, chapter 26. The penalty procedures are governed by Iowa Code section 453A.22(1) and the individual council's or board's procedures. Iowa Code chapter 17A does not apply to boards of supervisors or city councils. (See rule 701—84.7(421B).) The board of supervisors or the city council that issued a retail permit is required by Iowa Code chapter 252J to revoke the permit of any retailer who is an individual if the board or council has received a certificate of noncompliance from the child support recovery unit in regard to the retailer, unless the unit furnishes the board of supervisors or the city council with a withdrawal of the certificate of noncompliance.

If a permit is revoked under this subrule, except for the receipt of a certificate of noncompliance from the child support recovery unit, the permit holder cannot obtain a new cigarette permit of any kind nor may any other person obtain a permit for the location covered by the revoked permit for a period of one year unless good cause to the contrary is shown to the issuing authority. If a retail permit is suspended or

revoked, the suspension or revocation applies only to the place of business where the violation occurred and not to any other place of business covered by the permit.

The department or local authority must report the suspension or revocation of a retail permit to the department of public health within 30 days of the suspension or revocation.

81.12(2) *Tobacco licenses.* The director may revoke, cancel or suspend the license of any tobacco distributor or tobacco subjobber for violation of any provision in division II of Iowa Code chapter 453A, the rules promulgated thereunder, or any other statute applicable to the sale of tobacco products. The licensee shall be given ten days' notice of a revocation hearing under Iowa Code section 453A.48(2) and rule 701—7.55(17A). No license may be issued to any person whose license has been revoked under Iowa Code section 453A.44(11) for a period of one year. The department will revoke a license of a licensee, who is an individual, if the department has received a certificate of noncompliance from the child support recovery unit in regard to the licensee, unless the unit furnishes the department with a withdrawal of the certificate of noncompliance.

This rule is intended to implement Iowa Code section 453A.22 as amended by 2003 Iowa Acts, chapter 26, and sections 453A.13, 453A.44(11) and 453A.48(2).

701—81.13(453A) Permit applications and denials.

81.13(1) *Applications for permits.* The application forms for all permits issued under Iowa Code chapter 453A are available from the department upon request. The applications shall include, but not be limited to:

a. The nature of the applicant's business;

b. The type of permit requested;

c. The address of the principal office of the applicant;

d. The place of business for which the permit is to apply;

e. The names and addresses of principal officers or members, not to exceed three, if the business is not a sole proprietorship;

f. A list of persons who will be the applicant's suppliers or customers or both (whichever is applicable);

g. If the applicant intends to operate as a cigarette distributor, a certificate from a manufacturer of cigarettes indicating an intention to sell unstamped cigarettes to the applicant;

h. Whether or not the applicant possesses any other permit issued under Iowa Code chapter 453A; and

i. The signature of the person making the application. For electronically transmitted applications, the application form shall state that, in lieu of the person's handwritten signature, the person's E-mail address or the person's fax signature will constitute a valid signature.

81.13(2) *Denial of application for permit.* The department may deny a permit to any applicant who is, at the time of application, substantially delinquent in paying any tax due which is administered by the department or the interest or penalty on the tax. If the applicant is a partnership, a permit may be denied if a partner is substantially delinquent in paying any tax, penalty, or interest regardless of whether the tax is in any way a liability of or associated with the partnership. If an applicant for a permit is a corporation, the department may deny the applicant a permit if any officer, with a substantial legal or equitable interest in the ownership of the corporation, owes any delinquent tax, penalty, or interest of the applicant corporation. In this latter instance, the corporation must, initially, owe the delinquent tax, penalty, or interest, and the officer must be personally and secondarily liable for the tax. This is in contrast to the situation regarding a partnership. See rule 701—13.16(422) for characterizations of the terms "tax administered by the department" and "substantially delinquent" in paying a tax. This subrule is applicable to tax, interest, and penalty due and payable on and after January 1, 1987.

The director will deny a permit to any applicant, who is an individual, if the department has received a certificate of noncompliance from the child support recovery unit in regard to the individual, unless the unit furnishes the department with a withdrawal of the certificate of noncompliance.

81.13(3) *Revocation of a permit.* The department may revoke the permit of any permit holder who becomes substantially delinquent in paying any tax which is administered by the department or the

interest or penalty on the tax. If the permit holder is a corporation, the department may revoke the permit if any officer, with a substantial legal or equitable interest in the ownership of the corporation, owes any delinquent tax, penalty, or interest of the applicant corporation. In this latter instance, the corporation must, initially, owe the delinquent tax, penalty, or interest, and the officer must be personally and secondarily liable for the tax. If the permit holder is a partnership, a permit cannot be revoked for a partner's substantial delinquency in paying any tax, penalty, or interest which is not a liability of the partnership. See rule 701—13.16(422) for characterizations of the terms "tax administered by the department" and "substantially delinquent" in paying a tax. This subrule is applicable to tax, interest, and penalty due and payable on and after January 1, 1987.

The department will revoke the permit of any permit holder, who is an individual, if the department has received a certificate of noncompliance from the child support recovery unit in regard to the individual, unless the unit furnishes the department with a withdrawal of the certificate of noncompliance.

81.13(4) *Applications for retail cigarette permits.* Applications for retail cigarette permits are supplied by the department to city councils and county boards of supervisors. The application must be obtained from and filed with the individual council or board. The board of supervisors or the city council is required by 1995 Iowa Acts, chapter 115, to deny a retail permit to any applicant, who is an individual, if the board or council has received a certificate of noncompliance from the child support recovery unit in regard to the individual, unless the unit furnishes the board of supervisors or city council with a withdrawal of the certificate of noncompliance.

This rule is intended to implement Iowa Code sections 453A.13, 453A.16, 453A.17, 453A.22, 453A.23, and 453A.44, and 1995 Iowa Acts, chapter 115.

701—81.14(453A) Confidential information. The release of information contained in any reports or returns filed under Iowa Code chapter 453A or obtained by the department in the administration of Iowa Code chapter 453A is governed by the general provisions of Iowa Code chapter 22 since there are no specific provisions relating to confidential information contained in chapter 453A. Any requests for information must be made pursuant to rule 701—6.2(17A). See rule 701—6.3(17A).

Any request for information pertaining to a taxpayer's business affairs, operations, source of income, profits, losses, or expenditures must be made in writing to the director. The taxpayer to whom the information relates will be notified of the request for information and will be allowed 30 days to substantiate any claim of confidentiality under Iowa Code chapter 22 or any other statute such as Iowa Code section 422.72. If substantiated, the request will be denied; otherwise, the information will be released to the requesting party. This rule will not prevent the exchange of information between state and federal agencies.

This rule is intended to implement Iowa Code sections 453A.25 and 453A.49.

701—81.15(98) Request for waiver of penalty. Renumbered as 701—10.79(98), IAB 1/23/91.

701—81.16(453A) Inventory tax. All persons required to obtain a permit under Iowa Code section 453A.13 as distributors shall take an inventory of all cigarettes and little cigars in their possession prior to delivery for resale upon which the tax has been affixed and all unused cigarette tax stamps and unused metered imprints in their possession at the close of business on the day preceding the effective date of an increase in the tax rate.

Persons required to take an inventory shall remit the tax due on all cigarette stamps or metered imprints and all cigarettes and little cigars with revenue affixed in their possession prior to delivery for resale within 30 days of the inventory date. The tax is equal to the difference between the amount paid for cigarette stamps or metered imprints purchased prior to the tax increase and the amount that is to be paid for cigarette stamps or metered imprints purchased after the tax increase.

In computing the inventory tax, any discount allowed or allowable under Iowa Code section 453A.8 shall not be considered.

The inventory tax is applicable only when there is an increase in the tax rate. See rule 701—82.11(453A) for an explanation of whether a refund is allowable when there is a decrease in the tax rate.

This rule is intended to implement Iowa Code sections 453A.6, 453A.40, and 453A.43.

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CHAPTER 82
CIGARETTE TAX

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

701—82.1(453A) Permits required. Every person selling or distributing cigarettes or using or consuming untaxed cigarettes within the state of Iowa must first obtain the appropriate permit.

82.1(1) *Distributor's permit.* Every person acting as a distributor as defined in Iowa Code section 453A.1 must obtain a permit from the department. A distributor is any person who obtains unstamped cigarettes within or without this state by manufacture, production, import or by any means for the purpose of making the first intrastate sale or distribution or the first use or consumption in Iowa. Every distributor holding a distributor's permit will cause to be affixed, within or without Iowa, all cigarette tax stamps or meter impressions as set forth in rule 82.8(453A) and Iowa Code section 453A.10. The distributor permit expires annually on June 30, and costs $100. A distributor must obtain a duplicate permit for each place of business owned or operated by the distributor from which distributor activities are carried on. Duplicate distributor permits may be obtained from the department at an annual cost of $5 for each duplicate permit. A distributor may act as a wholesaler without obtaining a wholesaler's permit, but a wholesaler's permit may be obtained upon meeting all of the requirements for the issuance of a wholesaler's permit. If a distributor performs any other function which requires a permit, a separate permit must be obtained. If a person is not performing the functions of a distributor, a permit will not be issued.

82.1(2) *Wholesaler's permit.* Every person acting as a wholesaler as defined in Iowa Code section 453A.1 must obtain a wholesaler's permit. A wholesaler is any person, other than a distributor or a distributing agent, who sells or distributes cigarettes within Iowa for resale. A "sale or distribution" of cigarettes connotes a transfer of cigarettes from one person or entity to another person or entity. *Union Oil Co. of California v. State,* 2 Wash. 2d 436, 98 P, 2d 660 (1940); *State v. Nash Johnson and Sons' Farms Inc.,* 263 N.C. 66, 138 S.E. 2d 773 (1964). Therefore, an intraentity transfer is not a transaction which qualifies as a function of a wholesaler. The wholesaler permit expires annually on June 30, and costs $100 annually. A wholesaler must obtain a duplicate permit for each place of business owned or operated by the wholesaler from which wholesale activities are carried on. Duplicate wholesaler permits may be obtained from the department at an annual cost of $5 for each duplicate permit. If a person is not performing the functions of a wholesaler, a permit will not be issued.

The following example will illustrate the application of this subrule:

The XYZ Grocery Chain has a warehouse in Des Moines where stamped cigarettes are stored. The stamped cigarettes are purchased from a permitted distributor. XYZ transfers the cigarettes to its retail outlets across the state for the purpose of making retail sales, and makes no other sales. The storage of stamped cigarettes and the retail sale of cigarettes are not functions of a wholesaler, and XYZ would not be eligible for a wholesaler's permit.

82.1(3) *Cigarette vendor's permit.* Every person acting as a cigarette vendor as defined in Iowa Code section 453A.1 must obtain a permit from the department. A cigarette vendor is any person who takes responsibility for furnishing, installing, servicing, operating or maintaining one or more vending machines for the purpose of selling cigarettes at retail, and does so by reason of ownership, agreement or contract.

A retailer who holds a retail permit is not required to get a cigarette vendor's permit if the retail permittee is, in fact, the owner of the cigarette vending machine(s) which is operated in the location described in the retail permit. The cigarette vendor's permit expires annually on June 30, and costs $100 annually. A cigarette vendor must have a duplicate permit for each place of business from which cigarette vending machines are furnished, installed or serviced. A duplicate permit can be obtained from the department for an annual cost of $5. The duplicate permit applies to additional places of business from which the cigarette vendor conducts operations and not to those places of business where the cigarette vending machines are installed for retail sales.

EXAMPLE: A cigarette vendor owns three warehouses from which the vendor supplies cigarettes to 100 vending machines located at various retail establishments. The total permit cost for the vendor would be $110 ($100 for a regular permit plus $10 for two duplicate permits at $5 each).

82.1(4) *Railway retail permit.* A retail permit may be issued to a railway dining car company, railway sleeping car company, railroad or a railway company. A retailer's permit for railway cars is issued by the department for an annual cost of $25 and expires on June 30 of each year. A duplicate permit is required for each car in which cigarettes are stored for sale or sold and each duplicate permit is issued by the department at an annual cost of $2.

82.1(5) *Manufacturer's permit.* Any manufacturer, as defined in Iowa Code section 453A.1, may obtain a manufacturer's permit from the department. A manufacturer is any person who ships cigarettes into this state from outside the state. The permit is issued without cost and is valid until revoked or canceled. The permit allows the manufacturer to purchase tax stamps from the department and to affix such stamps to cigarettes outside of this state prior to their shipment into the state. A manufacturer is required to affix stamps to cigarettes prior to their shipment into this state unless the cigarettes are shipped to an Iowa permitted distributor or an Iowa permitted distributor's agent.

82.1(6) *Distributing agent's permit.* Every person acting as a distributing agent as defined in Iowa Code section 453A.1 must obtain a permit from the department. A distributing agent is any person in this state who acts as an agent of any manufacturer outside of the state by storing cigarettes received in interstate commerce from such manufacturer subject to distribution or delivery to distributors upon orders received from the manufacturer in interstate commerce and transmitted to such distributing agent for fulfillment from such storage place. The distributing agent's permit is issued by the department at an annual cost of $100 and expires on June 30 of each year. A separate permit at the $100 cost must be obtained for each place of business owned or operated within the state by the distributing agent. The permit authorizes the distributing agent to store unstamped cigarettes which are received in interstate commerce for distribution or delivery to distributors upon orders received from outside this state or to be sold outside this state. Stocks of cigarettes held for interstate and intrastate commerce must be kept separate.

82.1(7) *Retailer's permit.*

a. *In general.* Every person acting as a retailer, as defined in Iowa Code section 453A.1, must obtain a permit. A retailer is any person who:

(1) Directly sells, distributes or offers for sale cigarettes for consumption, or

(2) Possesses cigarettes for direct sale for consumption.

Retail permits are issued by the following authorities at the following prices:

1. Within unincorporated areas of a county, by the county board of supervisors at an annual cost of $50.

2. Within the city limits of a city of less than 15,000 population, by the city council, at an annual cost of $75.

3. Within the city limits of a city equal to or greater than 15,000 population, by the city council, at an annual cost of $100.

The retail permit expires on June 30 of each year. A renewal sticker furnished by the department containing the appropriate year and number may be issued in lieu of a new permit where the place of business of the retail permit holder has remained the same. The retail permit is valid only for the location described in the permit, and a retailer must obtain a separate permit for each place of business owned or operated by the retailer. (See subrule 82.2(3))

The power to grant the retail permit is discretionary with the city council or board of supervisors, and uniform, nondiscriminatory limits may be placed on its issuance. *Bernstein v. City of Marshalltown,* 215 Iowa 1168, 248 N.W. 26 (1933); *Ford Hopkins Co. v. City of Iowa City,* 216 Iowa 1286, 248 N.W. 668 (1933); 1938 O.A.G. 708. The city or county must submit a copy of any retail permit issued and the application for the permit to the department of public health within 30 days of issuance.

b. *Mobile retailer.* If a cigarette retailer sells cigarettes from a mobile concession vehicle, the vehicle itself shall be considered a place of business. A city has the discretionary power to grant a retail cigarette permit to a place of business located within the corporate limits of that city. A county

has the discretionary power to grant a retail cigarette permit to a place of business located within the unincorporated areas of the county. If a retailer is selling cigarettes from a mobile concession vehicle within the area of several permit-issuing authorities, the retailer must obtain a permit from each authority. The retailer is operating a single place of business within the jurisdiction of the several authorities and is, therefore, subject to regulation by each.

The location described on the permit shall include identification of the vehicle and the address of the permanent place of business from which the vehicle is dispatched. If the vehicle is traded in for a new vehicle, the exchange provisions of subrule 82.2(3) shall apply.

This rule is intended to implement Iowa Code section 453A.13 as amended by 2000 Iowa Acts, Senate File 2366, and sections 453A.16, 453A.17, and 453A.23.

701—82.2(453A) Partial year permits—payment—refund—exchange. For purposes of this rule, "year" means the cigarette tax year running from July 1 of year A to June 30 of year B and "quarter" means a yearly quarter with the first quarter commencing on July 1.

82.2(1) *Partial payment.* If any permit is granted other than in the first quarter, the following partial payments are required:

1. During the second quarter - 75 percent of the permit fee.
2. During the third quarter - 50 percent of the permit fee.
3. During the fourth quarter - 25 percent of the permit fee.

82.2(2) *Partial refund.* If any unrevoked permit for which the entire annual fee has been paid is voluntarily surrendered, the following permit fees will be refunded:

1. During the first quarter - 75 percent of the permit fee.
2. During the second quarter - 50 percent of the permit fee.
3. During the third quarter - 25 percent of the permit fee.

If any unrevoked permit for which 75 percent of the annual fee has been paid is voluntarily surrendered, the following permit fees will be refunded by the entity which issued the permit:

1. During the second quarter - 50 percent of the permit fee.
2. During the third quarter - 25 percent of the permit fee.

If any unrevoked permit for which 50 percent of the annual fee has been paid is voluntarily surrendered, the following permit fees will be refunded:

During the third quarter - 25 percent of the annual fee.

82.2(3) *Exchange of permits.* If a permittee changes the location of an operation requiring a permit but remains within the jurisdiction of the same entity which granted the original permit, the permittee may exchange the invalid permit (valid only for the location described in the permit) for a valid permit free of charge, without the partial payment-partial refund process. (1934 O.A.G. 106)

The following nonexclusive examples will illustrate the application of this rule:

EXAMPLE 1: City Bar and Grill sells cigarettes at retail and has obtained a retail cigarette permit from the city of Des Moines. The establishment is moved across the street but remains within the city limits of Des Moines. The retail permit is valid only for the location described in the permit, and therefore, the original permit is no longer valid. However, since the establishment has remained within the jurisdiction of the entity which granted the original permit, Des Moines, the original, presently invalid permit may be exchanged for a valid permit with a new location description at no cost.

EXAMPLE 2: Same as Example 1, except the new location of City Bar and Grill is outside the corporate limits of Des Moines and within the unincorporated area of Polk County. City Bar and Grill would have to surrender the old permit to the city of Des Moines and obtain a new permit from Polk County with the schedules set forth in this rule applying.

This rule is intended to implement Iowa Code section 453A.13, subsections 3 and 4.

701—82.3(453A) Bond requirements. The amount of the bond required for each permit shall be as follows:

1. Distributor permit - $2,500
2. Wholesaler permit - $2,500

3. Vendor permit - $1,000
4. Railway car retail permit - $500
5. Manufacturer permit - $5,000
6. Distributing agent permit - $2,500
7. Retail permit - $-0-
8. Nonpermittee storing interstate cigarettes - $5,000

If a person is required to obtain more than one type of permit, the bond requirements shall be cumulative and additional bonds or a single bond equal to the total aggregate requirements must be obtained. (See rule 701—81.7(453A) for the required form of the bond.)

This rule is intended to implement Iowa Code sections 453A.14, 453A.17 and 453A.23.

701—82.4(453A) Cigarette tax—attachment—exemption—exclusivity of tax.

82.4(1) *Tax.* See Iowa Code section 453A.6 for the rate of tax imposed on cigarettes.

82.4(2) *Attachment.* The tax is imposed when the cigarettes are received by any person in Iowa for the purpose of making a "first sale" of the cigarettes (as defined in Iowa Code section 453A.1). If the tax is not paid by the person making the first sale, it must be paid by any person into whose possession such cigarettes come until the tax has been paid, the tax to be paid only once. The fact that the tax is eventually paid will not relieve the person's standing prior in the chain of distribution of the sanctions for distributing untaxed cigarettes if the tax should have been paid sooner by said person.

The tax must be added to the selling price of every package of cigarettes so that the ultimate consumer bears the burden of the tax.

82.4(3) *Exemption.* If all of the following conditions are met, the Iowa cigarette tax need not be paid:

a. The cigarettes are imported on or about the person claiming the exemption,

b. The total quantity of cigarettes so imported is equal to or less than 40,

c. The seal of the individual cigarette package has been broken, and

d. The cigarettes are actually used by the person so importing and are not sold or offered for sale.

82.4(4) *Exclusivity of tax.* No other occupation or excise tax may be imposed by any political subdivision of the state. However, this provision does not apply to occupation or excise taxes imposed by the state.

82.4(5) *Sales exempt from tax.* Sales of cigarettes which the state is prohibited from taxing under the Constitution or the laws of the United States or under the Constitution of this state are exempt from the tax. If the sale is exempt from the tax, stamps must not be attached. No refund will be issued for stamps which are attached to cigarette packages which are later sold exempt.

a. *Sales to the federal government.* Military post exchanges or instrumentalities of the federal government are not required to comply with the provisions of Iowa Code chapter 453A nor pay the tax imposed thereunder. However, individuals who have purchased or obtained cigarettes from a federal instrumentality and come within the jurisdiction of the state, are subject to the provisions of Iowa Code sections 453A.6(2), 453A.36(1) and 453A.37. *U.S. v. Tax Commission of Mississippi,* 421 U.S. 599, 44 L.Ed. 2d 404, 95 S.Ct. 1872 (1975).

b. *Sales by or to Indians.* Sales by Indians to other Indians of their own tribe on federally recognized Indian reservations or settlements of which they are tribal members are exempt from the tax. The Indian sellers are subject to the record-keeping requirements of Iowa Code chapter 453A. The cigarettes must be purchased by the Indian seller with the tax included in the purchase price. The tax exemption is allowed to the Indian purchaser by the purchaser's filing a claim for refund of the tax paid or to the tribe of which the Indian purchaser is a member by the tribe's filing a claim for refund of the tax paid by the tribe on cigarettes sold to the Indian purchaser.

This rule is intended to implement Iowa Code section 453A.6 as amended by 1999 Iowa Acts, chapter 151.

701—82.5(453A) Cigarette tax stamps.

82.5(1) *In general.* To evidence the payment of the cigarette tax, cigarette stamps must be securely affixed to the individual cigarette containers. The stamps shall be provided by the director, and either

sold directly to a distributor or a manufacturer holding a valid distributor's or manufacturer's permit or through authorized banks, as defined in Iowa Code section 524.103 to these same permittees. The possession of unstamped cigarettes by persons not authorized to possess unstamped cigarettes shall be prima facie evidence of the nonpayment of the tax. The penalty for possession of unstamped cigarettes is set forth in Iowa Code section 453A.31(1) as amended by 1999 Iowa Acts, chapter 151, section 81. Any person in possession of unstamped cigarettes must pay the tax directly to the department. If sales of cigarettes exceed the purchase of cigarette stamps by persons authorized and responsible to affix stamps, there is established a rebuttable presumption that the excess cigarettes were sold without the tax stamps affixed thereto.

82.5(2) *Purchase of stamps from the department.* Stamps may be purchased from the department and from authorized banks in unbroken rolls of 30,000 stamps, or other quantities authorized by the director. The stamps may be purchased only by persons holding an unrevoked distributor's permit or an unrevoked manufacturer's permit.

When cigarette stamps are purchased from the department, orders shall be sent directly to the department on a form prescribed by and available upon request from the department. The order must be accompanied by a remittance payable to "Treasurer of State of Iowa" in the amount of the face value of the stamps less any discount as provided in rule 701—82.7(453A). The stamps shall be sent to the purchaser through the United States Postal Service by registered mail or similar delivery service at the department's expense. The purchaser may request alternate methods of transmission, but such methods shall be at the expense of the purchaser. Regardless of the method used to send the stamps, title transfers to the purchaser at the time the department delivers the stamps to the carrier.

82.5(3) *Purchase of stamps from authorized bank.* The purchase of stamps from an authorized bank must be made by the distributor or manufacturer or the distributor's or manufacturer's representative. The permittee shall furnish the bank with a requisition form prescribed by the department along with payment for the full price of the stamps less any discount as provided in rule 701—82.7(453A). The director may require such payments to be by cashier's check or certified check as to any individual distributor or manufacturer. The authorized bank shall be notified in writing by the department of any such requirement. Distributors or manufacturers who elect to purchase stamps from authorized banks shall advise the department in writing of the authorized bank so elected. The distributor or manufacturer may not purchase from any other bank other than the one so selected, but may still purchase stamps directly from the department. See rule 701—82.6(453A) for restrictions on authorized banks as to the sale of stamps. Also see rule 82.11(453A) relating to refunds.

This rule is intended to implement Iowa Code sections 453A.6, 453A.8, and 453A.28 as amended by 1999 Iowa Acts, chapter 151, and Iowa Code sections 453A.7, 453A.10, 453A.12, and 453A.35.

701—82.6(453A) Banks authorized to sell stamps—requirements—restrictions.

82.6(1) *Authorization.* The director has the discretion to allow the sale or distribution of stamps through authorized banks as defined in Iowa Code section 524.103. The authorization of a bank to sell stamps is not a mandatory direction, but may be utilized by the director to enhance the efficiency of the tax stamp distribution system. Some of the factors the director will consider in determining whether or not to authorize a bank to sell stamps are:

a. Geographical location in relation to distributors or manufacturers requesting alternative purchase locations,

b. The anticipated volume of stamps to be purchased by the requesting distributors or manufacturers,

c. Access to transportation systems, and

d. Prior experience with the bank.

82.6(2) *Sale of stamps.* An authorized bank may sell cigarette stamps only to distributors or manufacturers holding valid permits who have "elected" (as per subrule 82.5(3)) to purchase stamps from that bank. The department shall furnish each bank with a list of all such distributors or manufacturers who have so elected, and the bank shall not sell stamps to persons not on the list. The

bank must receive payment in full, less the discount, before selling stamps. See rule 82.7(453A). A bank is not authorized to accept credit memorandums from distributors or manufacturers.

82.6(3) *Stamp inventory.* Each bank shall keep an adequate inventory of stamps on hand to supply distributors or manufacturers assigned to said bank for at least six weeks. Stamps will be shipped freight prepaid to the bank from the department or from the supplier of the stamps. The supplier of the stamps shall advise the department at once by mail of a shipment to a bank and the bank shall advise the department at once by mail of the receipt of the stamps. Each bank shall store stamps in a secure vault.

82.6(4) *Reports and remittances.* Each bank authorized to sell stamps shall forward to the department the invoices, requisitions, and remittances for stamps sold on a daily basis. Each bank shall forward to the department, on the first working day of each month, an inventory report which shall minimally include as to the prior month: the quantity of stamps on hand at the beginning of the month, the quantity of stamps received during the month, the quantity of stamps sold as to each distributor or manufacturer, the quantity of stamps on hand at the end of the month and the signature of the person responsible for the stamps.

82.6(5) *Audit.* For the purpose of auditing for the end of the fiscal year, no bank shall sell cigarette stamps on the days from June 25 to June 30. With or without notice, the department or a representative designated by the department may take an inventory of stamps and audit stamp sales.

Each bank must retain all records of inventory, stamp receipts, and stamp sales for a period of three years.

82.6(6) *Termination of authorization.* The director may terminate the authorization of a bank to sell stamps if the bank has failed to comply with the provisions of this rule or Iowa Code chapter 453A, or if the director deems it desirable for the efficient distribution of stamps. Notice of termination shall be sent to the bank by certified mail. The bank may appeal the termination determination by filing a protest pursuant to 701—Chapter 7 within 30 days of notice of termination. A bank may voluntarily terminate the sale of stamps by giving the department 90 days' written notice. Upon termination, the bank must immediately return all stamps and present a final accounting, along with any remittances, to the department.

This rule is intended to implement Iowa Code sections 453A.8, 453A.12, and 453A.25.

701—82.7(453A) Purchase of cigarette tax stamps—discount. Upon the purchase of cigarette tax stamps, the distributor or manufacturer shall be entitled to a discount of 2 percent from the face value of the stamps.

This rule is intended to implement Iowa Code section 453A.8.

701—82.8(453A) Affixing stamps. Every package of cigarettes received in this state by a permitted distributor or for distribution within or without the state of Iowa must be stamped within 48 hours of its receipt, unless the distributor is also permitted as and is acting as a distributing agent. The cigarettes held by a person acting as a distributor and those held by the same person who is also acting as a distributing agent must be kept separate, and if not, the entire inventory will be subject to the 48-hour limitation. The 48-hour period shall be exclusive of Sundays and legal holidays. (See 1958 O.A.G. 25.)

This rule is intended to implement Iowa Code sections 453A.10 and 453A.17.

701—82.9(453A) Reports. Every person permitted as a cigarette distributor or manufacturer, or any other person as deemed necessary by the director, must file a monthly report on or before the tenth day of the month following the month for which the report is made. The report must be complete and certified by the person responsible for filling out the report. The failure to file a report or the filing of a false or incomplete report shall subject the person to a penalty as set forth in Iowa Code section 453A.31. (See rule 701—10.76(453A).) The report must be so certified or the report shall be considered incomplete. Whenever "cigarette" is used in this rule, it shall also include taxable "little cigars."

82.9(1) *In-state distributors not exporting cigarettes.* Every distributor with a place of business in Iowa where cigarettes are stamped and who is not engaged in exporting cigarettes from this state shall

file Forms 70-017 (Monthly Cigarette Tax Report) and 70-020 (Self Audit Report). The two forms are considered a multipart report and both forms must be completed before the report will be considered "filed."

a. The Monthly Cigarette Tax Report shall include, but not be limited to:

1. The distributor's name, permit number and address;
2. The amount of Iowa revenue purchased during the month;
3. The quantity of cigarettes on hand at the end of the month;
4. The amount of revenue on hand at the end of the month;
5. Purchases of cigarettes during the month and as to each purchase, the seller's name, the date of purchase, the invoice number, and the quantity purchased;
6. An inventory report as to out-of-state revenue;
7. The quantity of cigarettes returned to the factory along with supporting documents; and
8. The certification of the person responsible for making the report.

b. The Self Audit Report shall include, but not be limited to:

1. The distributor's name, permit number and address;
2. An inventory accounting for cigarettes; and
3. An inventory accounting for revenue.

The quantity of cigarettes distributed or stamped should be equal to the tax equivalent of the revenue used. Any discrepancy must be adequately explained.

82.9(2) *In-state distributors exporting cigarettes.* Every distributor with a place of business in Iowa where cigarettes are stamped who also engages in exporting cigarettes from this state shall file Form 70-017 (Monthly Cigarette Tax Report). This form must be completed before the report will be considered "filed."

82.9(3) *Out-of-state distributors.* Every distributor stamping cigarettes only without the state shall file Form 70-018 (Monthly Cigarette Tax Report). The Monthly Cigarette Tax Report (Form 70-018) shall include, but not be limited to:

1. The distributor's name, address and permit number;
2. An itemized statement of Iowa revenue purchased;
3. An inventory accounting of Iowa revenue;
4. A detailed schedule of cigarette distribution in Iowa and as to each distribution, the date, the name of purchaser or receiver, the purchaser's address and the quantity of cigarettes distributed; and
5. The certification of the person responsible for making the report.

82.9(4) *Manufacturers and other persons.* The monthly reports for manufacturers and other persons shall contain such information as the director deems necessary.

This rule is intended to implement Iowa Code section 453A.15 as amended by 1999 Iowa Acts, chapter 151.

701—82.10(453A) Manufacturer's samples.

82.10(1) Iowa Code section 453A.39 provides a method for manufacturers to distribute free sample packages of cigarettes or little cigars. This method is to be followed to the exclusion of all others. (See 1982 O.A.G. #710.)

The cigarettes or little cigars must:

a. Rescinded IAB 1/22/92, effective 2/26/92.

b. Be sent to a permitted distributor.

c. Rescinded IAB 1/22/92, effective 2/26/92.

d. Have tax paid thereon by a distributor.

e. Be clearly marked "sample."

f. Contain acknowledgment of tax being paid on each carton containing free samples.

The manufacturer must notify the department by affidavit of shipment and the distributor must notify the department by affidavit of receipt and separately remit the tax. The tax must be computed on a per cigarette basis rather than a per package basis.

82.10(2) Remittance of tax and acknowledgment of payment. Iowa Code section 453A.39 provides that the tax will be paid by a permitted distributor. The payment of tax should accompany the distributor's affidavit (Form 70-033).

The department will stamp the distributor's affidavit containing the remittance and return a copy of the affidavit to the distributor as the acknowledgment that taxes have been paid on the samples. After receiving the acknowledgment, and before the sample cigarettes are distributed, each distributor is requested to stamp the cartons of free samples with a stamp containing the following information:

IOWA STATE TAX PAID

Distributor's name

Permit number

The department will make every effort to return a copy of the distributor's remittance report on the same day it is received. In the event the distributor needs acknowledgment sooner, the distributor may request that the department acknowledge by telephone and follow up with the affidavit acknowledgment at a later date.

In the event sample cigarettes must be returned to the manufacturer for some reason, a refund of the taxes previously paid will be made to the distributor who actually remitted the tax to the department. The refund will be made in the same manner as for regular cigarettes by the distributor filing the appropriate forms with the department.

82.10(3) Promotions using cigarettes, noncigarettes or coupons. Promotional situations are specifically covered by Iowa Code section 421B.4. A promotional situation as described in section 421B.4 is valid provided it is a promotion scheme complying with the procedural requirements that it be a sale. A sale is defined to "mean and include any transfer for a consideration, exchange, barter, gift, offer for sale and distribution in any manner or by any means whatsoever."

Once a sale has occurred, the gift may be any kind whatsoever.

a. Promotion using cigarettes. If a manufacturer wants to run a promotion where two packs of cigarettes are sold for the price of one, the manufacturer could give the complimentary cigarettes to a distributor to be stamped who would then give them to a retailer who gives the cigarettes away with the purchase of another pack. Provided the distributor is reimbursed for the cost of the tax stamps, there is no violation of Iowa Code chapter 421B, by anyone. The following example illustrates what a manufacturer can do.

EXAMPLE. A manufacturer ships packs of 20, free of charge, to a permitted distributor with instructions to stamp them and send them to retail outlets or deliver them to one of the manufacturer's employees. The manufacturer reimburses the distributor for the cost of stamping the cigarettes. The manufacturer sends or furnishes the retailers instructions and display materials for the retail distribution of the cigarettes. This method of distribution would be proper.

The cost provisions of 421B.4 would not prevent the distribution of cigarettes in this example, since 421B.4 is silent with respect to below cost combination sales by manufacturers. The cost of cigarettes which are sold is controlled by section 421B.2. The cigarettes sold under the "buy one" portion of the promotion will have a cost of the lower of the true invoice or the lowest replacement cost. The cigarettes sold under the "get one free" portion of the promotion and which were obtained free of charge will have no invoice cost to the retailer.

b. Promotions using noncigarette items. A manufacturer wants to give away promotional items with the purchase of cigarettes at the regular price. Since Iowa Code section 421B.4 is silent with respect to below cost combination sales by manufacturers, the practice of the manufacturer providing a gift item such as cigarette lighters through wholesale channels to retailers which will be delivered to the customer at the time of the sale of the cigarettes does not violate chapter 421B. (See 1958 O.A.G. #22.)

c. Coupons. A manufacturer distributes coupons to the general public to allow the purchase of cigarettes at a reduced price. Provided it is the manufacturer who absorbs the entire cost of the reduction in price, there would be no violation of Iowa Code chapter 421B. Coupons which are sent to the final consumer to be redeemed by a retailer who is reimbursed by a manufacturer do not violate chapter 421B. (See 1968 O.A.G. #68.) This would be true even though the coupon represented the full price of the cigarettes.

d. Replacement packages. A manufacturer wants to respond to a customer complaint by replacing a package of 20 cigarettes purchased by the customer with another package of 20 cigarettes. The replacement package must be clearly marked with the following information:

COMPLIMENTARY. NOT FOR SALE. ALL APPLICABLE STATE TAXES PAID.

The manufacturer may pay the tax directly to the department by submitting an affidavit to the department containing the number of replacement packages sent into the state during the previous month, along with the remittance. The number of replacement packages and remittance may be submitted as part of the manufacturer's affidavit required under Iowa Code section 453A.39 (manufacturer's samples).

This rule is intended to implement Iowa Code sections 453A.1, 453A.13, 453A.16, 453A.22, 453A.31, 453A.39 and chapter 421B.

701—82.11(453A) Refund of tax—unused and destroyed stamps.

82.11(1) *Refunds of unused stamps and destroyed stamps.* Refunds shall be issued for unused stamps which are returned to the department for any reason by a person entitled to receive a refund. This includes unused stamps unaffixed at the close of the business day next preceding the effective date of a decrease in the tax rate which are in excess of the unstamped cigarette inventory on hand as of that date. Banks which are authorized to sell stamps or meter settings are not authorized to issue a refund; the stamps must be returned to and a refund will be issued only by the department. This subrule would also cover stamps which are recalled by the director for purposes of effectuating a change of design of the stamps. A refund will also be issued for stamps which have been lost through destruction, since destroyed stamps have not been used. A refund will not be issued for stamps which are lost (misplaced) or stolen, it being the distributor's or manufacturer's responsibility to maintain proper control over cigarette tax stamps. The claim for refund must be supported by proof of the fact of the loss and proof of the quantity of the loss. The claim must be filed within 30 days of the loss.

82.11(2) *Return of used stamps.* Refunds shall be issued for stamps which have been affixed to cigarettes which have become unfit for use or consumption or unsaleable. This refund is available to any permitted distributor or manufacturer upon proof that the cigarettes were returned to the person who manufactured the cigarettes. The proof required shall be an affidavit from the distributor setting forth to whom the cigarettes were returned and verifying that cigarette stamps had been affixed thereto. There must also be included therewith an affidavit from the manufacturer to whom the cigarettes were returned verifying the information.

82.11(3) *Cigarettes which have been destroyed.* The tax shall be returned on cigarettes which have been destroyed after the tax stamps have been affixed, to the person stamping the cigarettes. The person claiming the loss must be able to prove the fact of the loss and quantity of the loss. The claim, accompanied by proof of the loss and proof of the quantity of the loss, must be filed with the department no later than 30 days following the date the loss occurred. The amount of the refund shall be the face value of the stamps less the applicable discount allowed purchasers of tax stamps. This provision does not apply to cigarettes which are lost (misplaced) or stolen.

82.11(4) *Credit in lieu of a refund.* There are no statutory provisions to allow a credit in lieu of a refund of taxes paid for returned or destroyed cigarette stamps.

This rule is intended to implement Iowa Code section 453A.8.

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CHAPTER 83
TOBACCO TAX

[Ch 83, Selling Cigarette Revenue in Banks, rescinded, see IAC 4/2/80]
[Prior to 12/17/86, Revenue Department[730]]

701—83.1(453A) Licenses. Before any person engages in the business of a distributor or subjobber of tobacco products, that person must obtain a tobacco distributor's or tobacco subjobber's license. If the person holds a valid cigarette permit of any kind, the license will be issued without cost if all other requirements for the license are met, but the license must still be obtained. A tobacco retailer is required to obtain a retail cigarette/tobacco permit.

83.1(1) *Distributor license.* Every person operating as a tobacco distributor, as defined in Iowa Code section 453A.42, must obtain a tobacco distributor's license. A tobacco distributor is any person:

a. Engaging in selling tobacco products in this state who brings tobacco products or causes tobacco products to be brought into this state for the purpose of selling them in this state; or

b. Making, manufacturing, or fabricating tobacco products in this state for sale in this state; or

c. Selling tobacco products without this state who ships or transports tobacco products directly to retailers in this state to be sold by those retailers. In any distribution scheme whereby tobacco products are imported into this state for sale, there must be at least one distributor. The following examples shall illustrate the application of this rule:

EXAMPLE 1: Manufacturer, Inc. is in the business of processing tobacco products in the state of North Carolina. Retailer, Inc. is in the business of selling tobacco products at retail in the state of Iowa. If Manufacturer, Inc. ships tobacco products directly to Retailer, Inc., f.o.b. manufacturer's plant, both are performing the functions of a distributor; Manufacturer, Inc. is selling tobacco products without this state and shipping them directly to a retailer in this state, and Retailer, Inc. is causing tobacco products to be brought into this state from without the state for the purpose of sale. If either the out-of-state manufacturer or the in-state retailer has a distributor's license, the other need not, but may, have a distributor's license.

EXAMPLE 2: Manufacturer, Inc. is in the business of processing tobacco products in the state of North Carolina. Retailer, Inc. is in the business of selling tobacco products at retail in the state of Iowa. If Manufacturer, Inc. ships tobacco products directly to Retailer, Inc., f.o.b. Retailer's place of business, Manufacturer, Inc. is acting as a distributor and Retailer, Inc. is not. Manufacturer, Inc. is selling tobacco products without this state and shipping them directly to a retailer in this state. Retailer, Inc. is not causing tobacco products to be brought into this state from without the state.

The license is issued by the department at an annual cost of $100 unless the distributor possesses any valid cigarette permit in which case the license shall be issued without cost. A separate application and fee payment, if applicable, must be submitted for each place of business from which distributor activities are carried on. The license expires on June 30 of each year, and there are no provisions for partial year license fee refunds if the license is voluntarily surrendered. If a license is issued between January 1 and June 30 of any year, the license fee is one-half of the normal fee.

83.1(2) *Subjobber's license.* Every person, other than persons licensed as tobacco distributors, operating as a tobacco subjobber, as defined in Iowa Code section 453A.42, must obtain a tobacco subjobber's license. A tobacco subjobber is any person, other than a manufacturer or distributor, who purchases tobacco products from a distributor and sells them to persons other than the ultimate consumer. The license is issued by the department at an annual cost of $10, unless the subjobber possesses any valid cigarette permit, in which case, the license shall be issued without cost. A single subjobber's license shall be sufficient for the subjobber's entire activities within the state, that is, it is not issued for each place of business. The license expires annually on June 30 of each year, and there are no provisions for partial year license fee refunds if the license is voluntarily surrendered. If a license is issued between January 1 and June 30 of any year, the license fee is one-half of the normal fee.

This rule is intended to implement Iowa Code section 453A.44.

701—83.2(453A) Distributor bond. A bond in the amount of $1,000 is required to be posted before a distributor's license can be issued, regardless of whether or not the distributor is licensed and bonded as a cigarette permittee. If the distributor has a cigarette permit of any kind and is required to post a

bond thereunder, the amount of the cigarette bond(s) and the tobacco bond may be aggregated to reach a single bond requirement, and the distributor may provide a single bond in the aggregate amount provided the bond may be used to discharge either a cigarette tax liability or a tobacco tax liability. See rule 701—81.7(453A) relating to bonds.

This rule is intended to implement Iowa Code section 453A.44.

701—83.3(453A) Tax on tobacco products. The tax on tobacco products is to be paid but once, either upon distribution by a distributor or upon use or storage by a consumer. The tax is in addition to any occupation or privilege tax or license fees imposed by any city or county.

83.3(1) *Distributor's tax.* When a distributor:

a. Brings tobacco products or causes tobacco products to be brought into this state for sale;

b. Makes, manufactures, or fabricates tobacco products in this state for sale in this state; or

c. Ships or transports tobacco products directly to retailers in this state for sale by the retailer, the tax attaches at the rate specified in Iowa Code section 453A.43(1) of the wholesale price of the tobacco products. The wholesale price of the tobacco products is the manufacturer's gross list price.

83.3(2) *Consumer's tax.* If the tax has not been paid under Iowa Code section 453A.43(1) and subrule 83.3(1), the consumer is responsible for the tax specified in Iowa Code section 453A.43(2) on the cost to the consumer of the tobacco products used or stored by the consumer. The tax does not apply to the use or storage of tobacco products in quantities of:

1. Less than 25 cigars,
2. Less than ten ounces of snuff or snuff powder, or
3. Less than one pound of other tobacco products in the possession of any one consumer.

These exceptions do not apply to tobacco products subject to the tax imposed upon distributors under the provisions of Iowa Code section 453A.43(1) and subrule 83.3(1).

This rule is intended to implement Iowa Code section 453A.43.

701—83.4(453A) Tax on little cigars. "Little cigars" as defined in Iowa Code section 453A.42(5) means any roll for smoking made wholly or in part of tobacco not meeting the definition of cigarette as contained in Iowa Code section 453A.1(3) which either weighs three pounds or less per thousand or weighs more than three pounds per thousand (excluding packaging weight) and has a retail price of two and one-half cents or less per little cigar. All of the provisions applicable to cigarettes concerning the rate, imposition, method of payment and affixing of stamps apply equally to little cigars. The tax on little cigars is to be paid on the purchase of stamps by cigarette distributors or cigarette manufacturers who hold valid permits. The reporting requirements contained in section 453A.15 and rule 701—82.9(453A) shall pertain equally to the distribution of little cigars, and whenever information as to cigarettes is required to be reported, the same is required as to little cigars.

This rule is intended to implement Iowa Code sections 453A.42(5) and 453A.43.

701—83.5(453A) Distributor discount. Licensed tobacco distributors filing returns under Iowa Code section 453A.46 and rule 701—83.6(453A) are entitled to deduct, from the remittance for tax due, a discount equal to 3½ percent.

This rule is intended to implement Iowa Code section 453A.46(1).

701—83.6(453A) Distributor returns. Every distributor licensed under Iowa Code section 453A.44 must file monthly returns. These returns must be filed no later than the twentieth day of the month following the month covered by the return, and must include a remittance for the amount due less the applicable discount.

83.6(1) *In-state distributors.* Licensed tobacco distributors, with a place of business in Iowa, must file Forms 70-022 and 70-023 as the monthly distributor return. The return shall include, but not be limited to:

a. The distributor's name, address and license number;

b. An accounting of the acquisition of tobacco products subject to tax including as to each acquisition:

(1) The date received,

(2) The date and number of the invoice,

(3) The person from whom purchased, and

(4) The manufacturer's gross list price;

c. A claim for credit for tobacco products destroyed, returned to manufacturers and exported; and

d. The certification of the person responsible for making the return.

When claiming credits for tobacco products destroyed, returned to manufacturers and exported, Form 70-024 schedule I, Form 70-024 schedule II, and Form 70-025 schedule III, respectively, must be completed.

83.6(2) *Out-of-state distributors.* Licensed tobacco distributors, with no place of business in Iowa, must file Form 70-026 as the monthly distributor return. The return shall include, but not be limited to:

a. The distributor's name, address and license number;

b. An accounting of the sale in Iowa of tobacco products subject to tax including as to each sale:

(1) The date of sale,

(2) The invoice number,

(3) To whom sold,

(4) The purchaser's address, and

(5) The manufacturer's gross list price; and

c. The certification of the person responsible for making the return.

This rule is intended to implement Iowa Code sections 453A.46 and 453A.47.

701—83.7(453A) Consumer's return. Every person, other than a licensed tobacco distributor, who is responsible for reporting and paying the tax on tobacco products under Iowa Code section 453A.43(2) and subrule 83.3(2), shall file Form 70-022 (Monthly Distributor Tax Return) for any month that the person is responsible for paying the tax. The return shall be due by the twentieth day of the month following the month during which taxable tobacco products were acquired. The return shall be completed in all respects except the consumer will not have a permit number. The return must be accompanied by a full remittance in the amount of the tax due because the discount provided in Iowa Code section 453A.46(1) applies only to licensed distributors. The penalties provided in Iowa Code section 453A.46(3) apply to any taxpayer required to file any return and, therefore, apply equally to licensed tobacco distributors and any other person accruing a tax liability. See rules 701—81.8(453A) (penalty), 81.9(453A) (interest), and 81.10(453A) (waiver of penalty).

This rule is intended to implement Iowa Code section 453A.46.

701—83.8(453A) Transporter's report. The transportation of tobacco products into this state must be reported to the director. The report shall include, but not be limited to:

1. A description of the products imported,
2. The name and address of the seller or consignor,
3. The date of importation,
4. The name and address of the purchaser or consignee,
5. The point of origin, and
6. The point of destination.

83.8(1) *Out-of-state distributors.* Persons who are licensed as a tobacco distributor and have a place of business without the state, from which tobacco products are shipped, need not file a separate transportation report. This information is available from the distributor report.

83.8(2) *Common carriers.* Common carriers transporting tobacco products into this state need only report shipments to places other than public warehouses licensed under the provisions of Iowa Code chapter 554. Common carriers must file the transporter's report by the tenth day of the month following the month of importation.

83.8(3) *Others.* All other transportation of tobacco products into this state by persons other than described in subrules 83.8(1) and 83.8(2) must be reported to the department except:

a. The importation of tobacco products by the consumer in sufficiently small quantities to be exempt from the tax (see subrule 83.3(2)), and

b. The importation by the consumer of the tobacco products if the consumer is responsible to report and pay the tax under Iowa Code subsections 453A.43(2) and 453A.46(6) and subrule 83.3(2) and rule 83.7(453A).

The transportation report must be filed within 30 days of the date of importation.

This rule is intended to implement Iowa Code subsection 453A.45(4).

701—83.9(453A) Free samples. Where samples of tobacco products are distributed in this state, the person responsible for the distribution must pay the tax. The person responsible for the distribution shall file a return and pay the tax on the basis of the usual wholesale price for such products.

This rule is intended to implement Iowa Code sections 453A.43, 453.46, and 453A.49.

701—83.10(453A) Credits and refunds of taxes. Credits for tobacco products destroyed, returned to manufacturers or exported are provided in subrule 83.6(1). If the credits exceed the average monthly tax liability of the distributor, based upon the prior 12 tax periods, a refund may be issued.

Credits and refunds to a consumer who paid the tax pursuant to Iowa Code section 453A.43(2) shall be made for the same reasons and upon the same basis as credits and refunds to distributors.

This rule is intended to implement Iowa Code section 453A.47.

701—83.11(453A) Sales exempt from tax. Sales of tobacco products which the state is prohibited from taxing under the Constitution or the laws of the United States or under the Constitution of this state are exempt from the tax.

83.11(1) *Sales to the federal government.* Military post exchanges or instrumentalities of the federal government are not required to comply with the provisions of Iowa Code chapter 453A or pay the tax imposed thereunder. However, individuals who have purchased or obtained tobacco products from a federal instrumentality and come within the jurisdiction of the state are subject to the provisions of Iowa Code sections 453A.43(2) and 453A.50. *U.S. v. Tax Commission of Mississippi,* 421 U.S. 599, 95 S. Ct. 1872, 44 L.Ed.2d 404 (1975).

83.11(2) *Sales by or to Indians.* Sales by Indians to other Indians of their own tribe on federally recognized Indian reservations or settlements of which they are tribal members are exempt from the tax. The Indian sellers are subject to the record-keeping requirements of Iowa Code chapter 453A. The tobacco products must be purchased by the Indian seller with the tax included in the purchase price. The tax exemption is allowed to the Indian purchaser by the purchaser's filing a claim for refund of the tax paid or to the tribe of which the Indian purchaser is a member by the tribe's filing a claim for refund of the tax paid by the tribe on tobacco products sold to the Indian purchaser.

This rule is intended to implement Iowa Code section 453A.43(4).

701—83.12(81GA,HF339) Retail permits required. For administrative purposes, the retail permits will be called "cigarette/tobacco retail permits." A person shall not engage in the business of a retailer of tobacco products without first having received a permit as a cigarette/tobacco retailer. A cigarette/tobacco retail permit shall be obtained for each place of business owned or operated by a retailer. The holder of a cigarette/tobacco retail permit is not required to obtain a tobacco retail permit. The retailer may sell cigarettes only, tobacco products only, or both cigarettes and tobacco products. However, if the cigarette/tobacco permit is suspended, revoked, or expired, the cigarette retailer shall not sell any cigarettes or tobacco products during the time the permit is suspended, revoked, or expired.

This rule is intended to implement 2005 Iowa Acts, House File 339.

701—83.13(81GA,HF339) Permit issuance fee. Retail permits are issued by the following authorities at the following prices:

83.13(1) Outside any city, by the county board of supervisors, at an annual cost of $50.

83.13(2) In cities of less than 15,000 population, by the city council, at an annual cost of $75.

83.13(3) In cities of 15,000 or more population, by the city council, at an annual cost of $100.

83.13(4) If any permit is granted during the month of October, November, or December, the fee shall be three-fourths of the above maximum schedule; if granted during the month of January, February, or March, one-half of the maximum schedule; and if granted during the month of April, May, or June, one-fourth of the maximum schedule.

83.13(5) The retail permit expires on June 30 of each year. The city or county must submit a copy of any retail permit issued and the application for the permit to the department of public health within 30 days of issuance.

This rule is intended to implement 2005 Iowa Acts, House File 339.

701—83.14(81GA,HF339) Refunds of permit fee.

83.14(1) An unrevoked permit for which the retailer paid the full annual fee may be surrendered during the first nine months of the year to the office issuing it, and the city or county granting the permit shall make refunds to the retailer as follows:

a. Three-fourths of the annual fee if the surrender is made during July, August, or September.

b. One-half of the annual fee if the surrender is made during October, November, or December.

c. One-fourth of the annual fee if the surrender is made during January, February, or March.

83.14(2) An unrevoked permit for which the retailer has paid three-fourths of a full annual fee may be surrendered during the first six months of the period covered by the payment, and the city or county shall make refunds to the retailer as follows:

a. A sum equal to one-half of the annual fee if the surrender is made during October, November, or December.

b. A sum equal to one-fourth of the annual fee if the surrender is made during January, February, or March.

83.14(3) An unrevoked permit for which the retailer has paid one-half of a full annual fee may be surrendered during the first three months of the period covered by the payment, and the city or county shall refund to the retailer a sum equal to one-fourth of the annual fee.

This rule is intended to implement 2005 Iowa Acts, House File 339.

701—83.15(81GA,HF339) Application for permit. Retailer permits shall be issued only upon application, accompanied by the applicable fee, and made upon forms furnished by the department. The forms shall specify:

83.15(1) The manner under which the retailer transacts or intends to transact business as a retailer.

83.15(2) The principal office, residence, and place of business for which the permit is to apply.

83.15(3) If the applicant is not an individual, the principal officers or members of the applicant, not to exceed three, and their addresses.

83.15(4) Such other information as the director shall require.

This rule is intended to implement 2005 Iowa Acts, House File 339.

701—83.16(81GA,HF339) Records and reports.

83.16(1) The director shall prescribe the forms necessary for the efficient administration of 2005 Iowa Acts, House File 339, section 4, and may require uniform books and records to be used and kept by each retailer or other person as deemed necessary for a period of five years.

83.16(2) Every retailer shall, when requested by the department, make additional reports as the department deems necessary and proper and shall, at the request of the department, furnish full and complete information pertaining to any transaction of the retailer involving the purchase or sale or use of tobacco products.

This rule is intended to implement 2005 Iowa Acts, House File 339.

701—83.17(81GA,HF339) Penalties. The permit suspension and revocation provisions and the civil penalties established in Iowa Code section 453A.22 shall apply to tobacco retailers.

This rule is intended to implement 2005 Iowa Acts, House File 339.

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CHAPTER 84
UNFAIR CIGARETTE SALES
[Prior to 12/17/86, Revenue Department[730]]

701—84.1(421B) Definitions. For purposes of this chapter "wholesaler" and "retailer" mean a cigarette wholesaler and cigarette retailer as defined in Iowa Code section 421B.2. See opinion of the Attorney General, Griger to Bair, Director, Iowa Department of Revenue, 80-1-15. "Sale" or "sales" shall include an offer for sale.

This rule is intended to implement Iowa Code section 421B.2.

701—84.2(421B) Minimum price. The formula for determining the "cost" to a wholesaler or retailer as defined in Iowa Code section 421B.2 is not conclusive. The retailer, wholesaler or the department may prove that the "cost" is either higher or lower.

Any wholesaler or retailer who desires to prove that the wholesaler's or retailer's cost is less than the statutory presumptive cost computed according to the Iowa unfair cigarette sales Act, Iowa Code chapter 421B, shall submit a petition for approval of a lower cost along with actual cost data to the department of revenue. The statutory presumptive cost must be used in determining minimum price until approval has been granted by the department. If the requester continues to sell cigarettes at less than the presumptive cost, the department may revoke the requester's permit or seek an injunction pursuant to Iowa Code section 421B.10 to prevent such action.

Any requester making sales of cigarettes in or into Iowa for more than 12 months shall submit cost data for the 12-month period ending no more than 30 days prior to the submission of the petition. Any requester making sales of cigarettes in or into Iowa for less than 12 months shall submit cost data for the period beginning with the start of business and ending no more than 30 days prior to the submission of the petition. The department shall notify the wholesaler or retailer of the acceptance or rejection of the petition. If the requester disagrees with the department's determination, the requester may file a protest within 60 days of the department's decision in accordance with rule 701—7.41(17A).

Costs of doing business shall include, but are not limited to, freight charges, labor, and equipment costs to affix stamps, ink, glue, permit fees, management fees, labor costs (including salaries of officers), rents, depreciation, selling costs, maintenance expenses, interest expenses, delivery costs, taxes, insurance, advertising expenses, and any other operational and administrative costs. The requester shall set forth the basis for allocated costs. When the computed cost amounts to any fractional part of a cent, the cost must not be less than the next higher cent. However, sales made between wholesalers as provided for in Iowa Code section 421B.5, sales described in Iowa Code section 421B.6, and sales outside of the ordinary channels of trade as provided in Iowa Code section 421B.9 shall not be required to adhere to the minimum pricing requirements set forth in Iowa Code section 421B.3 and this rule. See rule 84.5(421B).

84.2(1) *Wholesaler's cost of cigarettes.* The statutory method for determining the wholesaler's cost of cigarettes is as follows:

a. *"Basic cost of cigarettes"* equals the lowest of true invoice cost, or lowest replacement cost, less trade or cash discounts plus one half of the state cigarette tax.

b. *"Cost to wholesaler"* equals the basic cost of cigarettes plus 3 percent of the basic cost plus the one half of the state cigarette tax not already included.

84.2(2) *Retailer's cost of cigarettes.* The statutory method for determining the retailer's cost of cigarettes is as follows:

a. "Basic cost of cigarettes" equals the lower of either true invoice cost exclusive of state cigarette tax or lowest replacement cost exclusive of state cigarette tax, minus trade or cash discounts plus one half of the state cigarette tax.

b. "Cost to retailers" equals the basic cost plus 3 percent of the basic cost, to the extent the retailer is allowed discounts ordinarily allowed wholesalers, plus 6 percent of the basic cost, plus the one half of the state cigarette tax not already included.

For purposes of determining the basic cost of cigarettes for wholesalers or retailers, trade or cash discounts may be deducted, if available, even though not taken. The discount taken or available must be clearly specified on the invoice or it will not be allowed as a reduction in the basic cost of cigarettes. Any financial incentive given to a wholesaler or retailer by a manufacturer at a later date will not reduce the basic cost of cigarettes.

The following example will demonstrate the application of this rule.

Manufacturer's list price per 1000 cigarettes	$115.70
Invoice price to wholesaler	$115.70
Less 2% discount	2.31
Plus ½ of the tax	9.00
Basic cost of cigarettes	$122.39
Plus 3% of basic cost	3.67
Retailer's basic cost	$126.06
Plus ½ of the tax	9.00
Minimum cost to wholesaler per 1000 cigarettes	$135.06
Per carton	$27.01
Less ½ state tax	1.80
Retailer's basic cost	$25.21
Plus 6% of basic cost	1.51
Plus ½ of state tax	1.80
Minimum cost to retailer	$28.52
Per pack	2.86/pack

This rule is intended to implement Iowa Code sections 421B.2, 421B.3, 421B.5, 421B.6 and 421B.9.

701—84.3(421B) Combination sales. Whenever cigarettes and another item are offered for sale at a total combined price, the sales price shall not be lower than the "cost to the wholesaler or retailer" of all articles sold. The "cost to the wholesaler or retailer" of all of the articles sold on a combined basis shall be determined under Iowa Code section 421B.2, subsections (1), (3), and (4).

If a promotional gift is given to the wholesaler or retailer by a cigarette manufacturer at no cost, which gift is to be given to consumers at no cost upon the sale of cigarettes, the minimum sales price will not be affected. The invoice cost of the promotional gift is zero, and therefore, the "cost to the wholesaler" or "cost to the retailer" of the promotional gift is zero. If, however, the wholesaler or retailer were to purchase items to be given away with the purchase of cigarettes by consumers, the minimum sales price would increase. The "cost to the wholesaler" or the "cost to the retailer" of the promotional item would be based upon the lower of invoice cost or replacement cost. (See 1958 O.A.G. 22.)

This rule is intended to implement Iowa Code section 421B.4.

701—84.4(421B) Retail redemption of coupons. The redemption of coupons by retailers, which coupons were supplied to consumers by manufacturers and will be redeemed from the retailers by the manufacturers, does not affect the minimum sales price of cigarettes. The retailer is still receiving the statutory minimum price even though that price is paid by two different persons, the consumer and the manufacturer. (See 1986 O.A.G. 68.) Manufacturer incentives to the consumer in lieu of a coupon which reduce the cost of the cigarettes to the consumer do not affect the minimum sales price of cigarettes when the manufacturer absorbs the loss for the incentive.

This rule is intended to implement Iowa Code section 421B.3.

701—84.5(421B) Exempt sales.

84.5(1) *Sales between wholesalers.* The sale price of cigarettes from one wholesaler to another wholesaler is not required to have included therein the "cost to the wholesaler" as defined in Iowa Code section 421B.2(4). All of the provisions of Iowa Code section 421B.3 shall apply to the subsequent sale by the purchasing wholesaler to any other person except another wholesaler.

84.5(2) *Exempt sales.* The provisions of Iowa Code chapter 421B do not apply to the following sales transactions:

a. An isolated sale, or

b. A bona fide clearance sale for the purpose of discontinuing trade in cigarettes as long as the sale states the reason for the sale and the quantity of cigarettes to be sold, or

c. The sale of damaged or imperfect cigarettes as long as the sale states the reason for the sale and the quantity of cigarettes to be sold.

84.5(3) *Sales to meet lawful competition.* A wholesaler or retailer may sell cigarettes below cost in good faith in order to meet the price of a competitor who is selling the same article at the cost to the competitor as defined in chapter 421B. Sales made under the exemptions contained in Iowa Code section 421B.6 and subrules 84.5(1) and 84.5(2) and sales of a bankrupt or forced sale shall not be considered in determining the cost to a competitor.

This rule is intended to implement Iowa Code sections 421B.5 to 421B.7.

701—84.6(421B) Notification of manufacturer's price increase. For purposes of determining the minimum cost of cigarettes to wholesalers or retailers, all manufacturers dealing with Iowa permittees shall notify the department in writing or by telegram within five working days of the effective date of any change in the manufacturer's list price for cigarettes.

This rule is intended to implement Iowa Code sections 421B.8 and 421B.11.

701—84.7(421B) Permit revocation. The department may revoke any permit issued under division I of Iowa Code chapter 453A for any violation of Iowa Code chapter 421B. The authority to revoke a retail cigarette permit for a violation of Iowa Code chapter 421B rests in the department even though the permit was issued by a city or county. The revocation shall be effectuated under the provisions of rule 701—81.12(453A).

Once the permit is revoked, the permittee cannot obtain another cigarette permit, nor may a permit be issued for the location covered by the revoked permit regardless of the identity of the applicant, for a period of at least six months.

This rule is intended to implement Iowa Code section 421B.11.

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CHAPTER 85
TOBACCO MASTER SETTLEMENT AGREEMENT

DIVISION I
TOBACCO MASTER SETTLEMENT AGREEMENT

701—85.1(453C) National uniform tobacco settlement. In 1998 the state of Iowa entered into an agreement with cigarette manufacturers called the Master Settlement Agreement (MSA). Subsequent to entering into that agreement, in 1999 the Iowa general assembly enacted Iowa Code chapter 453C. The statute requires the department of revenue to promulgate regulations to ascertain the amount of excise tax paid on cigarettes sold by nonparticipating tobacco product manufacturers in Iowa each year.

701—85.2(453C) Definitions. For the purposes of this chapter, the definitions set forth in Iowa Code section 453C.1 shall apply.

701—85.3(453C) Report required. Reports must be filed by tobacco products distributors, cigarette distributors, and persons who sell tobacco products at retail that were purchased from a person who is not required to file a distributor report. The report must be filed annually on or before the last day of the month following the close of the calendar year in which the sales were made and must be in a form and manner requested by the department. The reports are to be mailed to Iowa Department of Revenue, Compliance Division, Cigarette Tax Unit, P.O. Box 10456, Des Moines, Iowa 50306-0456.

701—85.4(453C) Report information. The report must include the following information with respect to units sold that were not purchased from a participating tobacco product manufacturer or units sold that were purchased from a participating tobacco product manufacturer but are not units sold as covered by the MSA:

1. The number of units sold.
2. The brand of the units sold.
3. The name and address of the person from whom each unit was purchased.
4. The name and address of the manufacturer of the unit, if known.
5. The name and address of the importer of the unit, if known, and whether that importer is the exclusive importer of the unit, if known.

A retailer may need to file a report when purchasing roll-your-own tobacco or cigarettes over the Internet, through a catalog from a vendor located outside of Iowa, from an Indian tribe or from an enrolled member of an Indian tribe located on a reservation in or outside Iowa, by mail order, or from a vendor located in another state.

A retailer must also, upon request by the department, report information with respect to units sold that were purchased from any participating tobacco product manufacturer.

701—85.5(453C) Record-keeping requirement. Every person who sells at retail tobacco products purchased from a person who is not required to file a report required by this chapter and every tobacco products distributor and cigarette distributor subject to this reporting rule must maintain complete and accurate records and underlying documentation for five years to support the data required to be supplied to the department under rule 701—85.4(453C). Upon request, all requested records and documents must be provided to the department.

701—85.6(453C) Confidentiality. The department of revenue may disclose any and all information filed pursuant to rule 701—85.4(453C) to the attorney general for use in enforcing compliance with Iowa Code chapter 453C.

These rules are intended to implement Iowa Code chapter 453C.

701—85.7 to **85.20** Reserved.

DIVISION II
TOBACCO PRODUCT MANUFACTURERS' OBLIGATIONS AND PROCEDURES

701—85.21(80GA,SF375) Definitions. For purposes of this division, the definitions set forth in 2003 Iowa Acts, Senate File 375, section 2, shall apply.

701—85.22(80GA,SF375) Directory of tobacco product manufacturers.

85.22(1) *Directory of cigarettes approved for stamping and sale in Iowa.* A tobacco product manufacturer and a brand family shall not be included in the directory authorized by 2003 Iowa Acts, Senate File 375, section 3, after April 30 each year until and unless the tobacco product manufacturer has provided current and accurate certification conforming to the requirements of 2003 Iowa Acts, Senate File 375, section 3. Nonparticipating manufacturers and their brand families shall not be included in the directory after April 30 each year until and unless the attorney general has determined that the nonparticipating tobacco product manufacturer is in full compliance with 2003 Iowa Acts, Senate File 375, section 3, and that neither subsection (2)*"b"*(1) nor (2)*"b"*(2) of section 3 applies to the nonparticipating tobacco product manufacturer or a brand family it seeks to have included in the directory. A tobacco product manufacturer or brand family shall be deleted from the directory if a determination is made by the attorney general that the tobacco product manufacturer no longer meets the requirements of 2003 Iowa Acts, Senate File 375, section 3, or that either subsection (2)*"b"*(1) or (2)*"b"*(2) of section 3 applies.

85.22(2) *Notice of inclusion in directory.* The attorney general shall notify a tobacco product manufacturer by mail that it has met the requirements of 2003 Iowa Acts, Senate File 375, section 3, and will be included in the directory. This notice shall include each brand family that the attorney general determines will be included in the directory.

85.22(3) *Notice of noninclusion in or deletion from the directory.* Tobacco product manufacturers that have applied for inclusion in the directory shall be notified in writing of a decision made by the attorney general not to include in or to delete from the directory the tobacco product manufacturer or a brand family. Such notice shall be served on the tobacco product manufacturer's agent for service of process by certified mail.

85.22(4) *Procedure for contesting notice of noninclusion or deletion.* A tobacco product manufacturer that disagrees with a decision made by the attorney general in relation to the directory may contest the validity of the decision within 60 days of the date of the decision by filing a written protest of that decision with the Iowa Department of Revenue, Clerk of the Hearings Section, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319, pursuant to rule 701—7.41(17A). The protest shall conform generally to the requirements of 701—subrules 7.41(1) and 7.41(2) to the extent applicable. The protest will, thereafter, be processed and a contested case hearing will be held in general conformity with the rules set forth in 701—Chapter 7, Division II, rules 7.43(17A), 7.45(17A), and 7.47(17A) to 7.49(17A), subrule 7.50(7), and rules 7.51(17A) to 7.54(17A) to the extent applicable. The burden of proof shall be on the tobacco product manufacturer to establish that it or a particular brand family is entitled to be listed in the directory.

The form, status, finality and appealability of orders shall be controlled by the general provisions of 701—subrule 7.50(7), except that no appeal to or on motion of the state board of tax review or any other agency is authorized. All parties to the contested case may appeal any orders entered in relation to the contested case.

Stays of the decision of the attorney general during the pendency of the contested case proceedings and judicial review of the final contested case order of the department may be sought under 701—subrule 7.50(8). However, the addition or retention of a tobacco product manufacturer or brand family in the directory shall not be ordered during the pendency of the contested case proceedings and judicial review of the final contested case order unless a sufficient bond has been provided to the attorney general to ensure that all escrow amounts owed at the time of bonding and all escrow amounts reasonably expected to become due during the pendency of the contested case and all related appeals will be satisfied if the

tobacco product manufacturer does not ultimately prevail in its challenge. Such bonds shall be subject to update on a quarterly basis on motion of the attorney general.

If a claim is made that a particular entity is the tobacco product manufacturer and the entity obtains an order allowing it and any of the brands it claims to be responsible for to be listed in the directory pending final resolution of its status and it is ultimately determined that the entity is not the tobacco product manufacturer, the required bond shall be forfeited to the state.

These rules are intended to implement 2003 Iowa Acts, Senate File 375.

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TITLE XI
INHERITANCE, ESTATE, GENERATION SKIPPING, AND FIDUCIARY INCOME TAX

CHAPTER 86
INHERITANCE TAX

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

701—86.1(450) Administration.

86.1(1) *Definitions.* The following definitions cover Chapter 86.

"Administrator" means the administrator of the compliance division of the department of revenue.

"Child" means a biological or adopted issue entitled to inherit pursuant to Iowa Code chapter 633.

"Compliance division" is the administrative unit of the department created by the director to administer the inheritance, estate, generation skipping transfer, and fiduciary income tax laws of the state.

"Department" means the department of revenue.

"Devise," when used as a verb, means to dispose of property, both real and personal, by a will.

"Director" means the director of revenue.

"Estate" means the real and personal property, tangible and intangible, of the decedent or a trust, that over time may change in form due to sale, reinvestment, or otherwise, and augmented by accretions or additions thereto and substitutions therefor, or diminished by any decreases and distributions therefrom. For the definitions of "gross estate" and "net estate" under this chapter, see those terms as referenced in this subrule.

"Executor" means any person appointed by the court to administer the estate of a testate decedent.

"Fiduciary" includes personal representative, executor, administrator, and trustee. This term includes both temporary and permanent fiduciaries appointed by the court to settle the decedent's probate estate and also the trustee of an inter vivos trust where the trust assets are part of the gross estate for inheritance tax purposes.

"Gross estate" as used for inheritance tax purposes as defined in Iowa Code section 450.2 includes all those items, or interests in property, passing by any method of transfer specified in Iowa Code section 450.3 without reduction for liabilities specified in Iowa Code section 450.12. The gross estate for tax purposes may not be the same as the estate for probate purposes. For example, property owned as joint tenants with right of survivorship, property transferred with a retained life use, gifts in excess of the annual gift tax exclusion set forth in Internal Revenue Code Section 2503(b) and within three years of death, transfers to take effect in possession or enjoyment at death, trust property, "pay on death" accounts, annuities, and certain retirement plans, are not part of the decedent's probate estate, but are includable in the decedent's gross estate for inheritance tax purposes. *In re Louden's Estate,* 249 Iowa 1393, 92 N.W.2d 409 (1958); *In re Sayres' Estate,* 245 Iowa 132, 60 N.W.2d 120 (1953); *In re Toy's Estate,* 220 Iowa 825, 263 N.W. 501 (1935); *In re Mann's Estate,* 219 Iowa 597, 258 N.W. 904 (1935); *Matter of Bliven's Estate,* 236 N.W.2d 366 (Iowa 1975); *In re English's Estate,* 206 N.W.2d 305 (Iowa 1973).

Effective for estates of a decedent dying on or after July 1, 2003, property and any interest in or income from any of the estates and property, which pass from the decedent owner in any manner, are subject to tax if the passing interest is in one of the following: (1) real estate and tangible personal property located in Iowa regardless of whether the decedent was a resident of Iowa at death; and (2) intangible personal property owned by a decedent domiciled in Iowa.

"Gross share" means the total amount of property of an heir, beneficiary, surviving joint tenant, or transferee, without reduction of those items properly deductible in computing the net shares. The total of all gross shares is equal to the gross estate.

"Heir" includes any person, except the surviving spouse, who is entitled to property of the decedent under the statutes of intestate succession.

"Internal Revenue Code" means the Internal Revenue Code of 1954 as defined in Iowa Code section 422.3(5) and is to include the revisions to the Internal Revenue Code made in 1986 and all subsequent revisions.

"Intestate estate" means an estate in which the decedent did not have a will. Administration of such estates is governed by Iowa Code sections 633.227 through 633.230. Rules of inheritance for such estates are found in Iowa Code sections 633.211 through 633.226.

"Issue," for the purpose of intestate succession, means all lawful lineal descendants of a person, whether biological or adopted. For details regarding intestate succession, see Iowa Code sections 633.210 through 633.226. For details regarding partial intestate succession, see Iowa Code section 633.272.

"Net estate" means the gross estate less those items specified in Iowa Code section 450.12 as deductions in determining the net shares of property of each heir, beneficiary, surviving joint tenant, or transferee. *In re Estate of Waddington*, 201 N.W.2d 77 (Iowa 1972). The total of all net shares of an estate must equal the total of the net estate.

"Net share" means the gross share less the liabilities, if any, which are properly deductible from the gross share of an heir, beneficiary, surviving joint tenant, or transferee. The law of abatement of shares may be applicable for purposes of determining the net share subject to tax. See Iowa Code section 633.436; *In re Estate of Noe*, 195 N.W.2d 361 (Iowa 1972); *Colthurst v. Colthurst*, 265 N.W.2d 590 (Iowa 1978); *In re Estate of Duhme*, 267 N.W.2d 688 (Iowa 1978). However, see Iowa Code section 633.278 for property subject to a mortgage.

"Personal representative" shall have the same meaning as the term is defined in Iowa Code section 633.3(29) and shall also include trustees. For information regarding claims of a personal representative, see Iowa Code section 633.431.

"Probate" means the administration of an estate in which the decedent either had or did not have a will. Jurisdiction over the administration of such estates, among other matters, is by the district court sitting in probate. For further details on the subject matter and personal jurisdiction of the district court sitting in probate, see Iowa Code sections 633.10 through 633.21. For matters regarding the procedure in probate, see Iowa Code sections 633.33 through 633.53.

"Responsible party" is the person liable for the payment of tax under this chapter. See 701—86.2(450).

"Simultaneous deaths" occur when the death of two or more persons occurs at the same time or there is not sufficient evidence that the persons have died otherwise than simultaneously. For distribution of property in this situation, see Iowa Code sections 633.523 through 633.528.

"Stepchild" means the child of a person who was married to the decedent at the time of the decedent's death, or the child of a person to whom the decedent was married, which person died during the marriage of the decedent.

"Surviving spouse" means the legally recognized surviving wife or husband of the decedent.

"Tax" means the inheritance tax imposed by Iowa Code chapter 450.

"Taxpayer" means a person liable for the payment of the inheritance tax under Iowa Code section 450.5 and includes the executor or personal representative of an estate, the trustee or other fiduciary of property subject to inheritance tax, and includes each heir, beneficiary, surviving joint tenant, transferee, or other person becoming beneficially entitled to any property or interest therein by any method of transfer specified in Iowa Code section 450.3, as subject to inheritance tax with respect to any inheritance tax due on the respective shares of the property.

"Trustee" means the person or persons appointed as trustee by the instrument creating the trust or the person or persons appointed by the court to administer the trust.

"Trusts" means real or personal property that is legally held by a person or entity for the benefit of another. This includes, but may not be limited to, express trusts, trusts imposed by court order, trusts administered by the court, and testamentary trusts. Such trusts are subject to Iowa Code chapter 450, even in situations when the estate consists solely of trust property.

"Unknown heirs" means heirs to an estate in which the identities of the heirs or the place of residency of the heirs cannot be ascertained with reasonable certainty.

"Will" includes codicil; it also includes a testamentary instrument that merely appoints an executor, and a testamentary instrument that merely revokes or revives another will. For information regarding mutual and contractual wills, see Iowa Code section 633.270.

86.1(2) *Delegation of authority.* The director delegates to the administrator, subject always to the supervision and review by the director, the authority to administer the Iowa inheritance tax. This delegated authority specifically includes, but is not limited to, the determination of the correct inheritance tax liability; making assessments against the taxpayer for additional inheritance tax due; authorizing refunds of excessive inheritance tax paid; issuing receipts for inheritance tax paid; executing releases of the inheritance tax lien; granting extension of time to file the inheritance tax return and pay the tax due; granting deferments to pay the inheritance tax on a property interest to take effect in possession or enjoyment at a future date; requesting or waiving the appraisal of property subject to the inheritance tax and the imposition of penalties for failure to timely file or pay the inheritance tax. The administrator may delegate the examination and audit of inheritance tax returns to the supervisors, examiners, agents, and any other employees or representatives of the department.

86.1(3) *Information deemed confidential.* Federal tax returns, federal return information, inheritance tax returns, and the books, records, documents, and accounts of any person, firm, or corporation, including stock transfer books, requested to be submitted to the department for the enforcement of the inheritance tax law, shall be deemed and held confidential by the department, subject to public disclosure only as provided by law. See 26 U.S.C. Section 6103 pertaining to confidentiality and disclosure of federal tax returns and federal return information.

86.1(4) *Information not confidential.* Copies of wills, the filing of an inheritance tax lien, release of a real estate lien, probate inventories, trust instruments, deeds and other documents which have been filed for public record are not deemed confidential by the department.

86.1(5) *Forms.* The final inheritance tax return, inheritance tax receipts, and forms for the audit, assessment, and refund of the inheritance tax shall be in such form as may be prescribed or approved by the director—see 701—8.3(17A).

86.1(6) *Safe deposit boxes and joint accounts.* Effective July 1, 1998, there is no longer a requirement for safe deposit boxes to be inventoried and reported to the department prior to the delivery of the assets to the personal representative, transferee, joint owner, or beneficiary. However, all persons, banks, credit unions, and savings and loan associations are required to notify the department of the balance in a joint account on the date of a deceased joint owner's death and the name and address of the surviving joint owner prior to permitting the withdrawal of funds from the joint account by a surviving joint owner.

This rule is intended to implement Iowa Code chapter 22 and Iowa Code sections 450.1 and 450.2 as amended by 2003 Iowa Acts, chapter 95, sections 1 and 2, and sections 421.2, 450.67, 450.68, 450.94, 450.97 and 450B.7.

701—86.2(450) Inheritance tax returns and payment of tax.

86.2(1) *Filing of an inheritance tax return.* Estates meeting certain requirements must file an inheritance tax return, and it is the duty of certain persons associated with the estate to file the inheritance tax return as follows:

a. *Mandatory filing.* The inheritance tax return provided for in subrule 86.2(2) must be filed if the gross share of any heir, beneficiary, transferee, or surviving joint tenant exceeds the exemptions allowable in Iowa Code sections 450.4 and 450.9. In addition, if Iowa real estate is includable in the gross estate, the return must be filed, even if no tax is due, prior to the issuance of a no tax due certificate.

Effective July 1, 2001, an estate is required to file an Iowa inheritance tax return if the entire estate of the decedent exceeds the sum of $25,000 after deducting the liabilities of the estate.

b. *Who must file.* If the decedent's estate is probated as provided in Iowa Code chapter 633 or administered as provided in Iowa Code section 450.22, the personal representative of the estate is charged with the duty of filing the return with the department. If the personal representative of the estate fails to file the return or if the estate is not probated, it shall be the duty of those heirs, beneficiaries, transferees, surviving joint tenants, and trustees who receive shares in excess of the allowable exemptions or shares which are taxable in whole or in part, without the deduction of liabilities, and those individuals in receipt of the decedent's property are either jointly or severally to file the return with the department.

c. Who is not required to file a return for estate of decedents dying on or after July 1, 2004. Effective for estates with decedents dying on or after July 1, 2004, if an estate has no Iowa inheritance tax due and there is no obligation for the estate to file a federal estate tax return, even though real estate is involved, an Iowa inheritance tax return need not be filed if one of the following situations is applicable:

(1) All estate assets are held solely in joint tenancy with right of survivorship between husband and wife alone; or

(2) All estate assets are held solely in joint tenancy with right of survivorship, and not as tenants in common, solely between the decedent and individuals listed in Iowa Code section 450.9 as individuals that are entirely exempt from Iowa inheritance tax; or

(3) All assets are passing by beneficiary designation pursuant to a trust and are intended to pass the decedent's property at death or through a nonprobate transfer solely to individuals listed in Iowa Code section 450.9 who are statutorily exempt from Iowa inheritance tax on shares received from a decedent based on their relationship to the decedent. The entire amount of property, interest in property, and income passing solely to the surviving spouse and to parents, grandparents, great-grandparents, and other lineal ascendants, to children including legally adopted children and biological children entitled to inherit under the laws of this state, stepchildren, and grandchildren, great-grandchildren, and other lineal descendants is exempt from tax; or

(4) All estate assets are passed by will or intestate succession as set forth in Iowa Code chapter 633, division IV, and beginning with section 633.210, solely to individuals who are statutorily exempt from Iowa inheritance tax as set forth above in subsection (3).

Paragraph 86.2(1)*"c"* does not apply to interests in an asset or assets that pass to both an individual listed in Iowa Code section 450.9 and that individual's spouse.

d. General rules. An Iowa inheritance tax return must be filed if estate assets pass to both an individual listed in Iowa Code section 450.9 and that individual's spouse.

(1) If an inheritance tax return is not required because the estate meets the criteria in paragraph 86.2(1)*"c,"* the final report (beginning with Iowa Code section 633.469) need not contain an inheritance tax receipt (clearance) issued by the department, but must properly certify that one of the criteria set forth in paragraph 86.2(1)*"c"* has been met as set forth in Iowa Code section 450.58(2).

(2) If any interest in real estate passes on account of the decedent's death and no Iowa inheritance tax return is required to be filed and the real estate does not pass through probate administration, then one of the persons succeeding to the interest in the real property must file an affidavit in the county in which the real property is located setting forth the legal description of the real property and the fact that an Iowa inheritance tax return is not required to be filed with the department. A copy of this affidavit must also be filed with the department with a schedule showing the value of the property for the purpose of ascertaining the basis of the property.

(3) If a return is filed with the department and the return is not required to be filed, the department will retain the return as required by statutes governing retention of returns. However, the department will not process the filed return if the statute does not require that the return be filed. The department will not issue a clearance in an estate in which a return is not required to be filed.

86.2(2) *Form and content—inheritance tax return.*

a. Estates of decedents dying prior to July 1, 1983. Rescinded IAB 10/13/93, effective 11/17/93.

b. Estates of decedents dying on or after July 1, 1983. For estates of decedents dying on or after July 1, 1983, the preliminary inheritance tax return is abolished and a single inheritance tax return is substituted in lieu thereof. The return shall provide for schedules listing the assets includable in the gross estate, a listing of the liabilities deductible in computing the net estate, and a computation of the tax due, if any, on each share of the net estate. The return shall conform as nearly as possible to the federal estate tax return, Form 706. For information regarding Iowa returns, see subrule 86.1(5). If the estate has filed a federal estate tax return, a copy must be submitted with the Iowa return. If the federal estate return includes the schedules of assets and liabilities, the taxpayer may omit the Iowa schedules of assets from the return. However, any Iowa schedules indicating liabilities must be filed with the Iowa return due to proration of liabilities. When Iowa schedules are filed with the return, only those schedules

which apply to the particular assets and liabilities of the estate are required. A return merely listing the assets and their values when the gross estate is in excess of $10,000 is not sufficient in nontaxable estates. In this case, the return must be amended to list the schedule of liabilities and the computation of the shares of the net estate before an inheritance tax clearance will be issued.

c. Special rule when the surviving spouse succeeds to property in the estate. Effective for estates of decedents dying on or after January 1, 1988, the following rules apply when the surviving spouse succeeds to property in the estate:

(1) If all of the property includable in the gross estate for inheritance tax purposes is held in joint tenancy with right of survivorship by husband and wife alone, an inheritance tax return is not required to be filed and a certificate from the department stating no inheritance tax is due is not required to release the inheritance tax lien under Iowa Code section 450.7(2).

(2) If any of the property includable in the gross estate passes to the surviving spouse by means other than by joint tenancy with right of survivorship or if any property passes by joint tenancy with right of survivorship when the surviving spouse is not the only surviving joint tenant, an inheritance tax return is required to be filed.

d. Estates of decedents dying on or after July 1, 1999. In addition to the special rule for surviving spouses set forth in paragraph *"c"* of this subrule, effective for estates of decedents dying on or after July 1, 1999, an estate that consists solely of property includable in the gross estate that is held in joint tenancy with right of survivorship and that is exclusively owned by the decedent and a lineal ascendant of the decedent, lineal descendant of the decedent, a child legally adopted in compliance with the laws of this state by the decedent or a stepchild of the decedent, or any other person declared exempt from Iowa inheritance tax pursuant to Iowa Code section 450.9, or a combination solely consisting of such persons, is not required to file an Iowa inheritance tax return, unless such an estate has an obligation to file a federal estate tax return. Property of the estate passing by means other than by joint tenancy with right of survivorship or if any property passes by joint tenancy with right of survivorship when the title of property is held by persons other than a lineal ascendant, lineal descendant, a child legally adopted in compliance with the laws of this state, or a stepchild of the decedent or by any other person declared exempt from Iowa inheritance tax pursuant to Iowa Code section 450.9, an inheritance tax return is required to be filed.

The exemption granted to stepchildren is limited to that class of step relationships exclusively. The exemption is not extended to include any lineal ascendants or descendants of the step relationship, such as stepparent or stepgrandparent. For a definition of "stepchild" for estates of decedents dying on or after July 1, 2003, please see the definition found in 701—86.1(450).

The rate of Iowa inheritance tax imposed on a share is based upon the relationship of the beneficiary to the decedent or the type of entity that is the beneficiary. A net estate that is less than $10,000 does not have an Iowa inheritance tax obligation. For estates of decedents dying on or after July 1, 2001, the net estate that is less than $25,000 does not have an Iowa inheritance tax obligation. The following is the most current Iowa inheritance tax rate schedule for net estates over $25,000:

SCHEDULE B

Brother, sister (including half-brother, half-sister), son-in-law, and daughter-in-law. There is no exemption.

If the share is:
Not over $12,500, the tax is 5% of the share.

If over	But not over	Tax is	Of excess over
$ 12,500	$ 25,000	$ 625 + 6%	$ 12,500
25,000	75,000	1,375 + 7%	25,000
75,000	100,000	4,875 + 8%	75,000

100,000	150,000	6,875 + 9%	100,000
150,000	and up	11,375 + 10%	150,000

SCHEDULE C

Uncle, aunt, niece, nephew, foster child, cousin, brother-in-law, sister-in-law, stepgrandchild, and all other individual persons. There is no exemption.

If the share is:
Not over $50,000, tax is 10% of the share.

If over	But not over	Tax is	Of excess over
$ 50,000	$100,000	$ 5,000 + 12%	$ 50,000
100,000	and up	11,000 + 15%	100,000

SCHEDULE D

A firm, corporation or society organized for profit, including an organization failing to qualify as a charitable, educational or religious organization:

Effective July 1, 2001, any fraternal and social organization which does not qualify for exemption under IRC Section 170(c) and 2055:

15% of the amount.

SCHEDULE E

Any society, institution or association incorporated or organized under the laws of any other state, territory, province or country than this state, for charitable, educational or religious purposes, or to a cemetery association, including a humane society not organized under the laws of this state, or to a resident trustee for use without this state, the rate of tax imposed in excess of $500:

10% of the amount.

SCHEDULE F

An unknown heir, as distinguished from an heir who is not presently ascertainable, due to contingent events:

5% of the amount.

SCHEDULE G

A public library or public art gallery within this state, open to the use of the public and not operated for gain, or to a hospital within this state, or a trustee for such use within this state, or to a municipal corporation for purely public purposes:

Entirely exempt: No tax.

(Also included in this class are bequests for the care and maintenance of the cemetery or burial lot of a decedent or the decedent's family.)

86.2(3) *Liability for the tax.* The personal representative of an estate is personally liable for the total tax due from any person receiving property subject to the tax, to the extent the person's share of the

property is subject to the jurisdiction of the probate court and the personal representative. The trustee of trust property subject to tax is personally liable for the total tax due from a beneficiary to the extent of the person's share of the trust property. Each heir, beneficiary, transferee, joint tenant, and any other person being beneficially entitled to any property subject to tax is personally liable for the tax due on all property received subject to the tax. The person is not liable for the tax due on another person's share of property subject to tax, unless the person is also a personal representative, trustee, or other fiduciary liable for the tax by reason of having jurisdiction over the property, the succession to which is taxable. *Eddy v. Short*, 190 Iowa 1376, 179 N.W. 818 (1920); *Waterman v. Burbank*, 196 Iowa 793, 195 N.W. 191 (1923).

86.2(4) *Supplemental return—deferred interest.* When the tax has been deferred on a property interest to take effect in possession or enjoyment after the termination of a prior property interest, it shall be the duty of the owner of the future interest to file a supplemental inheritance tax return with the department, reporting the future interest for taxation.

86.2(5) *Amended return.* If additional assets or errors in valuation of assets or deductible liabilities are discovered after the filing of the inheritance tax return increasing the amount of tax due, an amended inheritance tax return must be filed with the department, reporting the additional assets. The appropriate penalty and interest will be charged on the additional tax due pursuant to Iowa Code section 421.27 and department rules in 701—Chapter 10. To file an amended inheritance tax return, Form IA 706 shall be completed and at the top of the front page of the return the word "AMENDED" shall be printed. If additional liabilities are discovered or incurred after the filing of the inheritance tax return which result in an overpayment of tax, an amended inheritance tax return must be filed in the manner indicated above. For amended returns resulting from federal audit adjustments—see subrule 86.3(6) and rules 86.9(450), and 86.12(450). For permitted and amended returns not permitted for change of values—see subrule 86.9(4).

86.2(6) *Due date for filing—return on present property interests.* Unless an extension of time has been granted, the final inheritance tax return, or the inheritance tax return in case of decedents dying on or after July 1, 1983, must be filed and any tax due paid, for all property in present possession or enjoyment:

a. On or before the last day of the ninth month after death for estates of decedents dying on or after July 1, 1984, subject to the due date falling on a Saturday, Sunday, or legal holiday, which would then make the return due on the following business day. The following table for return due dates illustrates this subrule:

Deaths Occurring During:	Return Due Date:
July 1996	April 30, 1997
August 1996	June 2, 1997
	(May 31 is a Saturday and June 1 is a Sunday)
September 1996	June 30, 1997
October 1996	July 31, 1997
November 1996	September 2, 1997
	(August 31 is a Sunday, September 1 is Labor Day)
December 1996	September 30, 1997
January 1997	October 31, 1997
February 1997	December 1, 1997
	(November 30 is a Sunday)
March 1997	December 31, 1997
April 1997	February 2, 1998
	(January 31 is a Saturday and February 1 is a Sunday)

May 1997	March 2, 1998
	(February 28 is a Saturday and March 1 is a Sunday)
June 1997	March 31, 1998

b. Within nine months after death for estates of decedents dying during the period beginning July 1, 1981, and ending June 30, 1984.

86.2(7) *Election to file—before termination of prior estate.* The tax due on a future property interest may be paid, at the taxpayer's election, on the present value of the future interest as follows:

a. On or before the last day of the ninth month after the decedent's death (or within one year after the death of the decedent for estates of decedents dying prior to July 1, 1981). Compute the tax by applying the life estate, annuity, or present value tables to the value of the property at the date of the decedent's death. If age or time is a determining factor in computing the present value of the future interest, it is the age or time at the date of the decedent's death that must be used.

b. After the last day of the ninth month following the decedent's death (one year after death for estates of decedents dying prior to July 1, 1981) but prior to the termination of the prior estate. Compute the tax by applying the life estate, annuity, or present value tables to the value of the property at the date the tax is paid. If age or time is a determining factor in computing the present value of the future interest, it is the age or time at the date the tax is paid that must be used. *In re Estate of Wickham,* 241 Iowa 198, 40 N.W.2d 469 (1950); *In re Estate of Millard,* 251 Iowa 1282, 105 N.W.2d 95 (1960). *In re Estate of Dwight E. Clapp,* Clay County District Court, Probate No. 7251 (1980).

86.2(8) *Mandatory due date—return on a future property interest.*

a. For estates of decedents dying prior to July 1, 1984. Rescinded IAB 10/13/93, effective 11/17/93.

b. Mandatory due date—return on a future property interest for estates of decedents dying on or after July 1, 1981. Unless the tax due on a future property interest has been paid under the provisions of subrule 86.2(7), paragraphs *"a"* and *"b,"* the tax due must be paid on or before the last day of the ninth month following the termination of the prior estate. The statute does not provide for an extension of the mandatory due date for payment of the tax.

86.2(9) *Extension of time—return and payment.* For estates of decedents dying on or after July 1, 1984, the department may grant an extension of time to file an inheritance tax return on an annual basis. To be eligible for an extension, an application for an extension of time must be filed with the department on a form prescribed or approved by the director. The application for extension must be filed with the department prior to the time the tax is due and an estimated payment of 90 percent of the tax due must accompany the application—see Iowa Code section 421.27 and rule 701—10.85(422). An extension of time to pay the tax due may be granted in the case of hardship. However, for extensions to be granted, the request must include evidence of the hardship—see 701—Chapter 10. An extension of time to file cannot be extended for a period of time longer than ten years after the last day of the month in which the death of the decedent occurs.

86.2(10) *Discount.* There is no discount allowed for early payment of the tax due.

This rule is intended to implement Iowa Code sections 421.14, 450.4, 450.5, 450.6, 450.9, 450.22, 450.44, 450.46, 450.47, 450.51, 450.52, 450.53, 450.63, and 450.94 and 2004 Iowa Acts, chapter 1073, and 2005 Iowa Acts, chapter 14.

701—86.3(450) Audits, assessments and refunds.

86.3(1) *Audits.* Upon filing of the inheritance tax return, the department must audit and examine it and determine the correct tax due. A copy of the federal estate tax return must be filed with the inheritance tax return in those estates where federal law requires the filing of a federal estate tax return. The department may request the submission of wills, trust instruments, contracts of sale, deeds, appraisals, and such other information as may reasonably be necessary to establish the correct tax due. See Iowa Code sections 450.66 and 450.67 and *Tiffany v. County Board of Review,* 188 N.W.2d 343, 349 (Iowa 1971). For taxpayers using an electronic data interchange process or technology also see 701—subrule 11.4(4). The person or persons liable for the payment of the tax imposed by Iowa Code

chapter 450 shall keep the records relating to the gross and net estate required for federal estate tax purposes under 26 U.S.C. Section 6001 of the Internal Revenue Code and federal regulation Section 20.6001-1.

86.3(2) *Assessments for additional tax.* The taxpayer must file an inheritance tax return on forms prescribed by the director on or before the last day of the ninth month after the death of the decedent. When an inheritance tax return is filed, the department shall examine it and determine the correct amount of tax. If the amount paid is less than the correct amount due, the department must notify the taxpayer of the total amount due together with any penalty and interest which shall be a sum certain if paid on or before the last day of the month in which the notice is postmarked or on or before the last day of the following month if the notice is postmarked after the twentieth day of a month and before the last day of the following month. For estates with decedents dying on or after July 1, 1999, the date of the notice and not the postmark date is controlling. If the inheritance tax return is not filed within the time prescribed by law, taking into consideration any extensions of time, or the return as filed is not correct, the department may make an assessment for the tax and any penalty and interest due based on the inventories, wills, trust instruments, and other information necessary to ascertain the correct tax. For interest and penalty rate information, see 701—Chapter 10.

86.3(3) *Refunds.* If the examination and audit of the inheritance tax return discloses an overpayment of tax, the department will refund the excess to the taxpayer. See 701—Chapter 10 for the statutory interest rate commencing on or after January 1, 1982. For estates of decedents dying prior to January 1, 1988, interest shall be computed for a period beginning 60 days from the date of the payment to be refunded. For estates of decedents dying on or after January 1, 1988, interest must be computed for a period beginning the first day of the second calendar month following the date of payment, or the date upon which the return which sets out the refunded payment was actually filed, or the date that return was due to be filed, whichever date is the latest. For the purposes of computing the period, each fraction of a month counts as an entire month. If the taxpayer, after the tax has been paid, discovers additional liabilities which, when offset by any additional assets results in an overpayment of the tax, the excess payment will be refunded to the taxpayer upon filing with the department an amended inheritance tax return claiming a refund. No refund for excessive tax paid shall be made by the department unless an amended return is filed with the department within three years (five years for estates of decedents dying prior to July 1, 1984) after the tax payment upon which the claim is made became due, or one year after the tax was paid, whichever time is the later—see Iowa Code section 450.94(3).

86.3(4) *Supplemental assessments and refund adjustments.* The department may, at any time within the period prescribed for assessment or refund adjustment, make a supplemental assessment or refund adjustment whenever it is ascertained that any assessment or refund adjustment is imperfect or incomplete in any respect.

If an assessment or refund adjustment is appealed (protested under rule 701—7.41(17A)) and is resolved whether by informal proceedings or by adjudication, the department and the taxpayer are precluded from making a supplemental assessment or refund adjustment concerning the same issue involved in such appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation.

86.3(5) *Assessments—period of limitations.* Effective for estates of decedents dying on or after July 1, 1984, assessments for additional tax due must be made within the following periods of time:

a. Within three years after the return is filed for property reported to the department on the return. The three-year period of limitation does not begin until the return is filed. The time of the decedent's death is not relevant. For purposes of determining the period of limitations, the assessment period shall terminate on the same day of the month three years later which corresponds to the day and month the return was filed. If there is no numerically corresponding day three years after the return is filed, or if the expiration date falls on a Saturday, Sunday, or legal holiday, the assessment period expires the preceding day in case there is no corresponding day, or the next day following which is not a Saturday, Sunday, or legal holiday.

b. The period of time for making an assessment for additional tax is unlimited if a return is not filed with the department.

c. If a return is filed with the department, but property which is subject to taxation is omitted from the return, the three-year period for making an assessment for additional tax on the omitted property does not begin until the omitted property is reported to the department on an amended return. The omission of property from the return only extends the period of limitations for making an assessment for additional tax against the beneficiary, surviving joint tenant, or transferee whose share is increased by the omitted property. Other shares of the estate are not affected by the extended assessment period due to the omitted property. The inheritance tax is a separate succession tax on each share of the estate, not on the estate as a whole. *In re Estate of Stone,* 132 Iowa 136, 109 N.W. 455 (1906).

86.3(6) *Period of limitations—federal audits.*

a. Statute of limitations and federal audits in general. In the case of a federal audit, the department, notwithstanding the normal three-year audit period specified in Iowa Code paragraphs 450.94(5)*"a"* and *"b,"* shall have an additional six-month period for examination of the inheritance tax return to determine the correct tax due and for making an assessment for additional tax that may be due.

The additional six-month period begins on the date the taxpayer performs two affirmative acts: (1) notifies the department, and the department receives such a notification, in writing, that all controversies with the Internal Revenue Service concerning the federal estate, gift, and generation skipping transfer taxes have been concluded and (2) submits to the department a copy of the federal audit, closing statement, court decision, or any other relevant federal document concerning the concluded controversy. The additional six-month examination period does not begin until both of the acts are performed. See Iowa Code sections 622.105 and 622.106 for the mailing date as constituting the filing date and Iowa Code section 4.1(34) and *Emmetsburg Ready Mix Co. v. Norris,* 362 N.W.2d 498 (Iowa 1985) when the due date falls on a legal holiday.

b. Statute of limitations regarding federal audits involving real estate.

(1) In general. Effective for estates with decedents dying on or after July 1, 1999, in addition to the period of limitation for examination and determination, the department shall make an examination to adjust the value of real property for Iowa inheritance tax purposes to the value accepted by the Internal Revenue Service for federal estate tax purposes. The department shall have an additional six months to make an examination and adjustment for the value of the real property.

(2) Beginning of the additional six-month period. The additional six-month period for assessment and adjustment begins on the date the taxpayer performs two affirmative acts: (a) notifies the department, in writing, that all controversies with the Internal Revenue Service concerning the federal estate, gift, and generation skipping transfer taxes have been concluded and (b) submits to the department a copy of the federal audit, closing statement, court decision, or any other relevant federal document. Such documents must indicate the final federal determination and final audit adjustments of all real property.

(3) Adjustment required. The department must make an adjustment to the value of real property for inheritance tax purposes to the value accepted for federal estate tax purposes regardless of whether any of the following have occurred: an inheritance tax clearance has been issued; an appraisal has been obtained on the real property indicating a contrary value; there has been an acceptance of another value for real property by the department; an agreement has been entered into by the department and the personal representative for the estate and persons having an interest in the real property regarding the value of the real property.

(4) Refunds. Despite the time period for refunds set forth in Iowa Code section 450.94(3), the personal representative for the estate has six months from the day of final disposition of any real property valuation matter between the personal representative for the estate and the Internal Revenue Service to claim a refund from the department of an overpayment of tax due to the change in the valuation of real property by the Internal Revenue Service.

c. Effect of additional time periods. The additional six-month audit period set forth in *"a"* and *"b"* under this subrule does not limit or shorten the normal three-year examination period. As a result, a six-month additional examination period has no application if the additional six-month examination period would expire during the normal three-year audit period. If additional tax is found to be due, see paragraph 86.12(5)*"b"* for the inheritance tax lien filing requirements for securing the additional tax after an inheritance tax clearance has been issued. The six-month additional examination period means

the department shall have at least six months to examine the return after the notification. The department will have more time if the normal three-year examination period expires after the six-month additional period for examination. After the expiration of the normal three-year examination period, and absent an agreement to the contrary, the six-month extension of the statute of limitations for assessing Iowa inheritance tax based on federal audit adjustments for real property is limited to federal audit adjustments that directly affect Iowa inheritance tax and involve Iowa inheritance tax laws that incorporate Internal Revenue Code provisions. See Iowa Code section 450.94(5), 701—86.9(450) and 701—86.12(450), and *Kelly-Springfield Tire Co. v. Iowa Board of Tax Review,* 414 N.W.2d 113 (Iowa 1987).

This rule is intended to implement Iowa Code sections 422.25 and 422.30; section 450.37 as amended by 1999 Iowa Acts, chapter 151, section 47; and Iowa Code sections 450.53, 450.65, 450.71, 450.94, 450A.12 and 451.12.

701—86.4(450) Appeals. A determination made by the department of either the correct amount of the tax due, or the amount of refund for excessive tax paid, shall be final unless the taxpayer, or any other party aggrieved by the determination, appeals to the director for a revision of the department's determination. For notices of assessment issued on or after January 1, 1995, the department will consider a protest to be timely filed if filed no later than 60 days following the date of assessment notice or, if a taxpayer failed to timely appeal a notice of assessment, the taxpayer may make a payment pursuant to rule 701—7.8(17A) and file a refund claim within the period provided by law for filing such claims. In the event of an appeal, the provisions of 701—Chapter 7 of the department's rules of practice and procedure before the department of revenue and Iowa Code chapter 17A shall apply.

This rule is intended to implement Iowa Code chapter 17A and section 450.94.

701—86.5(450) Gross estate.

86.5(1) *Iowa real and tangible personal property.* Real estate and tangible personal property with a situs in the state of Iowa and in which the decedent had an interest at the time of death is includable in the gross estate regardless of whether the decedent was a resident of Iowa. It is immaterial whether the property, or interest, is owned singly, jointly, or in common. Certain other real and tangible personal property with a situs in the state of Iowa in which the decedent did not have an interest at death may also be part of the gross estate for tax purposes. Examples of such property transfers include, but are not limited to, transfers of real estate in which the grantor retained a life estate, life interest, interest or the power of revocation, property or interest in property in trust, and gifts made within three years of death in excess of the federal gift tax exclusion. These constitute transfers of property in which the decedent may not have an interest at death, but are includable in the gross estate for inheritance tax purposes. *In re Dieleman's Estate v. Dept. of Revenue,* 222 N.W.2d 459 (Iowa 1974); *In re English's Estate,* 206 N.W.2d 305 (Iowa 1973); and *Lincoln's Estate v. Briggs,* 199 N.W.2d 337 (Iowa 1972).

86.5(2) *Foreign real estate and tangible personal property.* Real estate and tangible personal property with a situs outside the state of Iowa are not subject to the Iowa inheritance tax and, therefore, are not includable in the decedent's gross estate for tax purposes. *Frick v. Pennsylvania,* 268 U.S. 473, 45 S. Ct. 603, 69 L.Ed. 1058 (1925); *In re Marx Estate,* 226 Iowa 1260, 286 N.W.2d 422 (1939).

86.5(3) *Intangible personal property—decedent domiciled in Iowa.* Intangible personal property, or interest therein, owned by a decedent domiciled in Iowa is includable in the gross estate for inheritance tax purposes regardless of the physical location of the evidence of the property or whether the account or obligation is with a non-Iowa financial institution. *Curry v. McCanless,* 307 U.S. 357, 59 S. Ct. 900, 83 L.Ed 1339 (1939); *Lincoln's Estate v. Briggs,* 199 N.W.2d 337 (Iowa 1972).

86.5(4) *Intangible personal property—decedent domiciled outside Iowa.* Intangible personal property may have more than one inheritance tax situs and be subject to multiple state inheritance taxation. Therefore, it has been held that the situs of intangible personal property is the place where the owner is domiciled and also where the intangible has acquired a business situs or is located for state inheritance tax purposes. More than one state can subject the succession to such intangible property to tax. *State Tax Commission of Utah v. Aldrich,* 316 U.S. 174, 62 S. Ct. 1008, 86 L.Ed. 1358 (1942); *Curry v. McCanless,* 307 U.S. 357, 59 S. Ct. 900, 83 L.Ed. 1339 (1939); *Chaffin v. Johnson,* 200 Iowa

89, 204 N.W. 424 (1925). Intangible personal property owned by a decedent domiciled outside Iowa may be subject to the Iowa inheritance tax and, therefore, includable in the gross estate if the physical evidence of the property has an Iowa situs or if the intangible property is an account or obligation of an Iowa financial institution. This intangible personal property is not subject to Iowa inheritance tax if the state of domicile subjects the property to a state death tax and either does not subject intangible personal property owned by a decedent domiciled in Iowa to a state death tax, or grants reciprocity to Iowa-domiciled decedents on like intangible personal property. Intangible personal property owned by a decedent domiciled outside Iowa is subject to the Iowa inheritance tax if the state of domicile does not grant an exemption or reciprocity to like intangible personal property owned by Iowa decedents, or does not impose a death tax on intangible property.

86.5(5) *Classification of property.* The property law of the state of situs determines whether property is classified as real, personal, tangible or intangible and also whether decedent had an interest in the property. *Dieleman's Estate v. Dept. of Revenue,* 222 N.W.2d 459 (Iowa 1974); *Williamson v. Youngs,* 200 Iowa 672, 203 N.W. 28 (1925).

86.5(6) *Insurance—in general.* Whether the proceeds or value of insurance is includable in the gross estate for inheritance tax purposes depends on the particular facts in each situation. Designated beneficiary and type of insurance (life, accident, health, credit life, etc.) are some of the factors that are considered in determining whether the value or proceeds are subject to tax. *In re Estate of Brown,* 205 N.W.2d 925 (Iowa 1973).

a. Insurance proceeds subject to tax. The proceeds of insurance on the decedent's life owned by the decedent and payable to the decedent's estate or personal representative is includable in the gross estate. Insurance owned by the decedent on the life of another is includable in the gross estate to the extent of the cash surrender value of the policy. The proceeds of all insurance to which the decedent had an interest, at or prior to death, but are payable for reasons other than death, are includable in the gross estate. *Bair v. Randall,* 258 N.W.2d 333 (Iowa 1977).

b. Insurance proceeds not taxable. Insurance on the decedent's life payable to a named beneficiary, including a testamentary trust, other than the insured, the estate, or the insured's personal representative, is not subject to Iowa inheritance tax. *In re Estate of Brown,* 205 N.W.2d 925 (Iowa 1973).

c. Insurance proceeds includable—depending on circumstances. Credit life insurance and burial insurance are offsets against the obligation. If the obligation is deducted in full or in part in computing the taxable shares of heirs or beneficiaries, the proceeds of the credit life and burial insurance are includable in the gross estate to the extent of the obligation. Insurance on the decedent's life and owned by the decedent, pledged as security for a debt is an offset against the debt if the insurance is the primary source relied upon by the creditor for the repayment of the obligation and is includable in the gross estate on the same conditions as credit life insurance. See *Estate of Carl M. Laartz* Probate No. 9641, District Court of Cass County, March 17, 1973; *Estate of Roy P. Petersen,* Probate No. 14025, District Court of Cerro Gordo County, May 16, 1974.

Insurance on the decedent's life, payable to a corporation or association in which the decedent had an ownership interest, while not subject to tax as insurance, may increase the value of the decedent's interest. *In re Reed's Estate,* 243 N.Y. 199, 153 N.E.47, 47 A.L.R. 522 (1926).

86.5(7) *Gifts in contemplation of death—for estates of decedents dying prior to July 1, 1984, only.* A transfer of property, or interests in property by a decedent, except in the case of a bona fide sale for fair consideration within three years of the grantor's death, made in contemplation of death, is includable in the decedent's gross estate. Any such transfer made within the three-year period prior to the grantor's death is presumed to be in contemplation of death, unless it is shown to the contrary. Whether a transfer is made in contemplation of death depends on the intention of the grantor in making the transfer and will depend on the facts and circumstances of each individual transfer.

a. Factors to be considered include, but are not limited to:

(1) The age and health of the grantor at the time of the transfer,

(2) Whether the grantor was motivated by living or death motives,

(3) Whether or not the gift was a material part of the decedent's property,

(4) Whether the gift was an isolated event or one of a series of gifts during the decedent's lifetime.

b. Factors which tend to establish that the motive for the gift was prompted by the thought of death include, but are not limited to:

(1) Made with the purpose of avoiding death taxes,

(2) Made as a substitute for a testamentary disposition of the property,

(3) Of such an amount that the remaining property of the grantor would not normally be sufficient to provide for the remaining years of the grantor and those of the grantor's household,

(4) Made with the knowledge that the grantor is suffering from a serious illness that is normally associated with a shortened life expectancy.

c. Factors which tend to establish that the gift was inspired by living motives include, but are not limited to:

(1) Made on an occasion and in an appropriate amount that is usually associated with such gift giving occasions as Christmas, birthdays, marriage, or graduation,

(2) Made because of the financial need of the donee and in an amount that is appropriate to the need,

(3) Made as a remembrance or reward for past services or favors in an amount appropriate to the occasion,

(4) Made to be relieved of the burden of management of the property given, retaining sufficient property and income for adequate support and maintenance.

For a gift to be determined to have been made in contemplation of death it is not necessary that the grantor be conscious of imminent or immediate death. However, the term means more than the general expectation of death which all entertain. It is a gift when the grantor is influenced to do so by such expectation of death, arising from bodily or mental condition, as prompts persons to dispose of their property to those whom they deem the proper object of their bounty. It is sufficient if the thought of death is the impelling cause for the gift. *U.S. v. Wells,* 283 U. S. 102, 51 S. Ct. 446, 75 L.Ed. 867 (1931); *In re Mann's Estate,* 219 Iowa 597, 258 N.W. 904 (1935).

d. Gifts made within three years prior to death—for estates of decedents dying on or after July 1, 1984. All gifts made by the donor within three years prior to death, which are in excess of the annual calendar year federal gift tax exclusion provided for in 26 U.S.C. Section 2503, subsections b and e, are included in the gross estate for inheritance tax purposes. The motive, intention or state of mind of the donor is not relevant. Date of valuation for a gift in which there was a full transfer of ownership is valued at the date in which the gift is completed. However, for a gift of an interest in property that is less than a full transfer of ownership, which includes, but is not limited to, a life estate or conditional gift, the date of valuation is the date of the death of the decedent, unless alternative valuation is chosen. Effective for estates of decedents dying on or after July 1, 2003, valuation of property transferred by the grantor or donor is based on the net market value at the date of transfer. The fact alone that the transfer is a gift, in whole or in part, and exceeds the annual calendar year exclusion for federal gift tax purposes, is sufficient to subject the excess of the transfer over the exclusion to tax. The exclusion is applied to the total amount of the gifts made to a donee in a calendar year, allocating the exclusion to the gifts in the order made during the calendar year. This rule has important application to the earliest year of the three-year period before death because the three-year period for inheritance tax purposes is measured from the date the decedent-donor died. This will only rarely coincide with a calendar year. As a result, none of the gifts made in the earliest calendar year of the three-year period prior to death, regardless of the amount, which are made before the beginning of the three-year period, measured by the decedent's death date, are subject to tax. However, gifts made before the three-year period begins in this earliest year will reduce or may completely absorb the exclusion amount that is available for the remaining part of this first-year period. The significance of the difference between the three-year period prior to death and the calendar year exclusion amount is illustrated by the following:

EXAMPLE. The decedent-donor, A, died July 1, 1995. The three-year period during which gifts may be subject to inheritance tax begins July 1, 1992. During the calendar year 1992, A made a cash gift to nephew B of $11,000 on May 1, 1992, and a second gift to B of $4,000 on August 1, 1992. In this example, none of the $11,000 gift made on May 1, 1992, is includable for inheritance tax purposes

because it was made before the three-year period began, based on A's date of death. All of the $4,000 gift made on August 1, 1992, is includable for inheritance tax purposes because it is in excess of the calendar year 1992 federal gift tax exclusion of $10,000.

(1) Split gift. At the election of the donor's spouse, a gift made by a donor to a person, other than the spouse, shall be considered, for inheritance tax purposes, as made one half by the donor and one half by the donor's spouse. This split gift election for inheritance tax purposes is subject to the same terms and conditions that govern split gifts for federal gift tax purposes under 26 U.S.C. Section 2513.

The consent of the donor's spouse signified under 26 U.S.C. Section 2513(b) shall also be presumed to be consent for Iowa inheritance tax purposes, unless the contrary is shown. If the split gift election is made, the election shall apply to all gifts made during the calendar year. Therefore, if the election is made, each spouse may use the annual exclusion ($10,000 for 1994) which shall be applied to one-half of the total value of all gifts made by both spouses during the calendar year to each donee.

(2) Types of transfers which may result in a gift. Whether a transfer of property constitutes a gift depends on the facts and circumstances surrounding each individual transfer. Transfers which may result in a gift, in whole or in part, include, but are not limited to: sales of property where the purchase price, or terms of sale, are less than fair market value; a loan of money, interest free, even though the loan is payable on demand; the release of a retained life use of property; and the payment of a debt or other obligation of another person.

(3) Types of transfers that are not a gift. However, certain transfers which in property law would be considered a present transfer of an interest in property may not be considered gifts within the Iowa three-year rule under Iowa Code section 450.3(2). Rather the transfers may be transfers intended to take effect in possession or enjoyment at death. Examples of this kind of transfer would include, but are not limited to, transfers in trust or otherwise, with a retained life use or interest; commercial annuities where payments are made to a beneficiary upon the death of the primary annuitant; transfers that place property in joint tenancy; irrevocable transfers of real or personal property where the deed or bill of sale is placed in escrow to be delivered only upon the grantor's death. Transfers of this kind are subject to inheritance tax under Iowa Code section 450.3(3) as a transfer to take effect in possession or enjoyment at death, even though under property law an interest in the property may have been transferred prior to death. Different kinds of transfers that may constitute a taxable gift, in whole or in part, include but are not limited to the following:

EXAMPLE A. Grantor-decedent, A, on July 1, 1992, transferred to nephew B, without consideration, a 160-acre Iowa farm, reserving the life use. On the date of transfer, the farm had a fair market value of $2,000 per acre, or $320,000. On August 1, 1994, A released the retained life estate without any consideration being given and then died on December 1, 1994. The release on August 1, 1994, constitutes a gift, for inheritance tax purposes, of the value of the entire farm (less the annual gift tax exclusion), within the three-year period prior to death. What is taxable is what would have been taxable had the release not been given. *United States v. Allen,* 293 F.2d 916 (10th Cir. 1961); Rev. Ruling 56-324, 1956 2 C.B. 999. In this example, the gift is not to be valued at the time of the release of the life use, but rather at its fair market value at the time of death. See subrule 86.9(1). The real estate cannot be valued at its alternate valuation date because it is not included in the federal gross estate for federal estate tax purposes, but rather it constitutes an adjusted taxable gift not eligible for the alternate valuation date. See rule 86.10(450) and Federal Estate Tax Regulation Section 20.2032-1(a) and (d).

EXAMPLE B. A, on August 1, 1992, loaned brother B $450,000 which was evidenced by a non-interest-bearing promissory note, payable on demand. A died on October 1, 1994, with no part of the loan having been repaid. The principal amount of the note is includable in A's gross estate. The free use of money is a valuable property right to the debtor. *Dickman v. Commissioner,* 465 U.S. 330 (1984). Thus, in effect, A has made a gift of the value of the interest to B each year the debt remains unpaid. Assuming for purposes of illustration that the applicable federal short-term rate for the entire year is 9 percent for each year and no other gifts were made to B, A has made a gift to B of $40,500 through August 1993 (one year after the note was executed) and an additional gift of $40,500 through August 1, 1994, and two months' interest of $6,750 from August 1, 1994, to the date of death on October 1, 1994. Therefore, in calendar year 1992 A has made a gift of 5/12 of $40,500, or $16,875. After deducting

the annual calendar year exclusion of $10,000, $6,875 is subject to inheritance tax. Since the loan was outstanding for all of calendar year 1993, $40,500, less the $10,000 exclusion, or $30,500, is subject to inheritance tax. For calendar year 1994 the loan was outstanding for nine months. Three-fourths of $40,500, less $10,000, or $20,375, is subject to inheritance tax.

In this example it is not necessary that the loan be made within the three-year period prior to death. It is the free use of the loan during the three-year period prior to death that constitutes the gift.

EXAMPLE C. On March 1, 1992, A sold a 160-acre Iowa farm to niece B for $1,500 per acre, or $240,000. On the date of sale, the fair market value of the farm was $2,500 per acre, or $400,000. A died on August 1, 1994. This sale is, in part, a gift. It is not a bona fide sale for an adequate and full consideration in money or money's worth and as a result, the difference between the sale price and the fair market value of the farm on the date of sale constitutes a gift. The sale price in this example represents only 60 percent of the farm's fair market value; therefore, 40 percent of the farm is a gift. However, the gift percentage to apply to the farm's value at death is 38 percent, not 40 percent, because the $10,000 annual gift tax exclusion must be deducted from the value of the gift. See the computation of this percentage in Example D immediately following.

EXAMPLE D. On March 1, 1992, A sold a 160-acre Iowa farm to niece B for $2,500 per acre, or $400,000, which was also the fair market value of the farm on the date of sale. The sale was an installment sale contract, payable in 20 equal annual installments of principal and interest. The unpaid principal balance is to draw interest at one-half of the prevailing Federal Land Bank loan rate, which for purposes of illustration we will assume to be the rate of 12 percent, or 6 percent per year. The annual payments of principal and interest are $34,873.82 per year. A died on August 1, 1994. In this example, the sale price in and of itself does not constitute a gift because the sale price was also the fair market value of the farm. However, the difference between the prevailing Federal Land Bank loan rate of 12 percent and the contract rate of 6 percent constitutes a gift from A to B.

The amount of the gift that is includable in the gross estate is computed by determining the present value of the future annual payments of $34,873.82 discounted to reflect a 12 percent return on the investment. The discounted value is then divided by the fair market value of the farm on the date of the sale to determine the percentage of the sale price that is a bona fide sale for full consideration and the percentage of the sale price that represents a gift before the annual exclusion. The gift percentage is then applied to the fair market value of the farm (or special use value, if applicable) at death, to determine the amount that is includable in the gross estate.

The computation in this example is as follows:

The present value of the future annual payments of $34,873.82 for 20 years to reflect a 12 percent return on an investment is $260,488.05. That is, an investor who desires to earn the market rate of return of 12 percent on an investment would only pay $260,488.05 for this 6 percent $400,000 contract of sale.

Bona Fide Sale Percentage

Present value: 260,488.05 = 65%

Sale price: 400,000.00

This is the percentage of the sale price of $400,000 that represents a bona fide sale for full consideration.

Gift Percentage

The sale price of $400,000 - $260,488.05 or $139,511.95 is the gift portion of the sale price due to the 6 percent interest rate on the contract, before the $10,000 annual exclusion is deducted.

The gift percentage is computed as follows:

$$\$139{,}511.95 - \$10{,}000 = \frac{129{,}511.95}{400{,}000.00} = 32\%$$

In this example the gift percentage used to determine the amount of the farm value at death that is taxable is only 32 percent of the value because deducting the $10,000 exclusion reduced the gift percentage from 35 percent to 32 percent. The gift took place in the year of sale not in the year of death. As a result, 32 percent of fair market value (or special use value, if applicable) of the farm at the time of the donor's death is includable in the gross estate for inheritance tax purposes.

86.5(8) *Joint tenancy property—in general.* Whether the form of ownership of property is considered to be joint tenancy is determined by the property law of the state of the situs of the property. Generally, the words and phrases "to A and B as joint tenants with full rights of survivorship and not as tenants in common" create a joint tenancy form of ownership unless a contrary interest can be shown by material evidence. "To A or B, payable to the order of self" creates an alternative right of ownership and for tax purposes is treated as joint tenancy property. *In re Estate of Martin,* 261 Iowa 630, 155 N.W.2d 401 (1968); *Petersen v. Carstensen,* 249 N.W.2d 622 (Iowa 1977); *In re Estate of Louden,* 249 Iowa 1393, 92 N.W.2d 409 (1958). Joint tenancy property may be held by more than two persons. *In re Estate of Horner,* 234 Iowa 624, 12 N.W.2d 166 (1944). However, the use of the words "as joint tenants" alone without the use of the phrase "with right of survivorship" may only create a tenancy in common. *Albright v. Winey,* 226 Iowa 222, 284 N.W. 86 (1939).

a. Joint tenancy property—husband and wife alone. Generally there are no shares in joint tenancy property because each joint tenant owns the whole property. As a result, joint tenancy property is not taxed like tenancy in common property where each owner has a specific share. If the joint tenancy property is held by husband and wife alone, only one-half of the property is includable in the gross estate for inheritance tax purposes in the estate of the first joint tenant to die. However, if the survivor can establish by competent evidence that separate money or property was used and contributed to a larger percentage than one-half to the acquisition of a specific item or items of jointly held property, then the larger percentage of such item or items shall be excluded from taxation. *Ida M. Jepsen v. Bair,* No. 85, State Board of Tax Review, June 18, 1975.

b. Joint tenancy property—not held by husband and wife alone. Property held in this form of joint tenancy is includable in the gross estate of the deceased joint tenant, except to the extent the surviving joint tenant or tenants can establish contribution to the acquisition of the joint property, in which case the proportion attributed to the contribution is excluded from the gross estate. In the case of multiple joint tenancy property, excess contribution established by one surviving joint tenant cannot be attributed to another surviving joint tenant. For tax purposes, the requirement of contribution in effect establishes percentage ownership—or shares—in jointly held property that does not exist in property law. Contribution to the acquisition of jointly held property can be established by the survivor by proof, which includes, but is not limited to, evidence that the property was acquired by gift, inheritance, or purchase from the survivor's separate funds or property. Contribution means cash or cash in kind that is applied to the cost of obtaining the property at issue. Unlike joint tenancy property held solely between husband and wife, if any of the surviving joint tenants is not the spouse of the decedent, the presumed one-half exclusion is not automatically available without proof of contribution.

c. Joint tenancy—convenience or constructive trust. If the record ownership of bank accounts, certificates of deposit, and other kinds of property are held in the form of joint tenancy, but in fact are held by the decedent and another person or persons who have a confidential or fiduciary relationship with the decedent, the property is not held in joint tenancy but is held in constructive or resulting trust by the survivor for the decedent. A confidential or fiduciary relationship is any relationship existing between the parties to a transaction wherein one of the parties is duty bound to act with the utmost good faith for the benefit of the other party. In its broadest connotation, the phrase embraces those multiform positions in life wherein one comes to rely on and trust another in one's important affairs. *First National Bank v. Curran,* 206 N.W.2d 317 (Iowa 1973). The fact that the decedent furnished the funds to acquire the property or demonstrated a kind, considerate, and affectionate regard for the survivor does not in itself establish a confidential relationship between the decedent and the survivor. If the evidence to establish

a contrary relationship with respect to property in the form of joint tenancy is not substantial, a joint tenancy exists as a matter of law. *Petersen v. Carstensen,* 249 N.W.2d 622 (Iowa 1977).

If a confidential relationship constituting a constructive or resulting trust is established on behalf of the decedent, the property or property interest that is the subject of the trust is part of the decedent's gross estate as singly owned property.

86.5(9) *Transfers reserving a life income or interest.* If the grantor transfers property, except in the case of a bona fide sale for fair consideration, reserving the income, use, possession, or a portion thereof for life, the property is includable in the gross estate for inheritance tax purposes. *In re Sayres' Estate,* 245 Iowa 132, 60 N.W.2d 120 (1953); *In re Estate of English,* 206 N.W.2d 305 (Iowa 1973). If there is a full reservation of income, the entire value of the property in which the reservation exists is includable for tax purposes. If only a portion of the income is reserved, the amount subject to tax is the full value of the property at death multiplied by a fraction of which the total income reserved is the numerator and the total average earning capacity of like property is the denominator. See *In re Estate of English,* 206 N.W.2d at 310.

The reservation of the life income, or portion thereof, need not necessarily be stated or contained in the instrument of transfer to be includable for taxation. The transfer of property may contain no reservation of income or other incidents of ownership in the grantor, but if there is a contemporaneous agreement between the grantor and grantee to pay the income, or portion thereof, to the grantor for life, the two instruments or agreements when considered together may be construed to be reservation of the income from the transferred property. See *In re Sayres' Estate,* 245 Iowa 132 at 141, 142, 60 N.W.2d 120 (1953) for a full discussion of the subject.

The instrument need not be in any special form. For example, it may take the form of a contract of sale to terminate at death where the payments consist of the income from the property only. In addition, the transfer to be includable for taxation is not limited to income-producing property. For example, the transfer of the grantor's dwelling, reserving the life occupancy, falls within the meaning of a reserved life income or interest. Generally, revocable trusts can be classified as reserving a life income or interest. This type of transfer does not fall within the $10,000 gift exclusion.

86.5(10) *Powers of appointment—in general.* Iowa Code section 450.3(4) is concerned with two aspects of powers of appointment that are subject to inheritance tax. First, the taxation of the decedent's property subject to the power of appointment in the estate of the donor (decedent), and second, the exercise, or nonexercise, of the power of appointment over the property in the estate of the donee (the decedent possessing the power).

a. General power of appointment. Whether the instrument of transfer utilized by the donor creates a general or special power of appointment is a matter of property law. For example, a devise to A for life with "power to dispose of and pass clear title ... if A so elects," creates a life estate with a general power of appointment. *In re Estate of Cooksey,* 203 Iowa 754, 208 N.W. 337 (1927). Also to A for life, "Especially giving unto A the right to use and dispose of the same as A may see fit," creates a general power of appointment, *Volz v. Kaemmerle,* 211 Iowa 995, 234 N.W. 805 (1931). However, the power to sell and convert the assets subject to the power does not in itself create a general power of appointment. *In re Estate of Harris,* 237 Iowa 613, 23 N.W.2d 445 (1946). A power is general if being testamentary, it can be exercised wholly in favor of the estate of the donee. *In re Estate of Spencer,* 232 N.W.2d 491 at 495, 496 (Iowa 1975). The definition of a general power of appointment contained in 26 U.S.C. Section 2056(b)(5) of the Internal Revenue Code would meet the test of a general power under Iowa law.

b. Special power of appointment. If there is a limitation on the donee's right to use the corpus only for care, maintenance and support, the power is special, not general. *Brown v. Brown,* 213 Iowa 998, 240 N.W. 910 (1932). Also, to A for life with power to handle the property for A's interest, limits the power of invasion of the principal for care and support only, and is therefore a special, not a general, power of appointment. *Lourien v. Fitzgerald,* 242 Iowa 1258, 49 N.W.2d 845 (1951). Also, to A for life, with unrestricted power of sale with no power over the sale proceeds creates only a special power of appointment in the donee. *McCarthy v. McCarthy,* 178 N.W.2d 308 (Iowa 1970).

If the donee's power to appoint is limited to a class or group of persons, a special, not a general, power is created. *In re Estate of Spencer,* 232 N.W.2d 491, at 496 (Iowa 1975).

c. Powers of appointment—taxation in donor's estate. If the instrument in the donor's estate creates a general power of appointment, the property subject to the power is taxed as if the property had been transferred to the donee in fee simple. Those who would succeed to the property in the event the power is not exercised are treated in the donor's estate as if they receive no interest in the property, even though in property law those who succeed to the property either by the exercise, or nonexercise, take from the donor of the power. *In re Estate of Higgins,* 194 Iowa 369 at 373, 189 N.W. 752 (1922); *Bussing v. Hough,* 237 Iowa 194 at 200, 21 N.W.2d 587 (1946).

If the instrument in the donor's estate creates a special power of appointment, the property subject to the power is taxed as if the donee of the power had received a life estate or term for years, as the case may be. Those persons who would take the property in the event the special power is not exercised are taxed in the donor's estate as if they had received the remainder interest in the property subject to the special power, although an election to defer payment of the tax may result in either no tax or a different tax obligation. This could happen, for example, if the special power is the power to invade the corpus for the health, education, and maintenance of the donee.

d. Powers of appointment in the estate of a donee dying on or after January 1, 1988. Property which is subject to a general power of appointment is includable for inheritance tax purposes in the gross estate of a donee dying on or after January 1, 1988, if the donee has possession of the general power of appointment at the time of the donee's death, or if the donee has released or exercised the general power of appointment within three years of death. Whether or not the donee of a general power exercises the general power at death is not relevant to the includability of the property subject to the general power in the estate of the donee. The mere possession of the power at death is sufficient for the property subject to the power to be included in the estate of the donee for inheritance tax purposes.

Property subject to a special power of appointment is not includable in the gross estate of the donee of the power regardless of whether the donee possesses the special power or exercised the power at death, unless a QTIP election was made under Iowa Code subsection 450.3(7) in which case the rule governing QTIP elections shall control. See paragraphs 86.5(10)*"a"* and *"b"* for the distinction between a general and special power and subrule 86.5(11) for the rule governing QTIP elections.

For inheritance tax purposes, if there is an exercise or release of the general power within three years of the donee's death, the property subject to the exercise or release is includable in the donee's estate just as if the donee had retained possession of the power at death and is taxable to those to whom the property is appointed in case the power is exercised, or to those who take in default of the exercise in case the power is released.

The general power of appointment is considered to have been exercised for the purposes of this rule when the nature of the disposition is such that if it were a transfer or disposition of the donee's property, the transfer would be subject to inheritance tax under Iowa Code section 450.3. The power is considered exercised in the following three nonexclusive classes of cases: (1) where there has been some reference in the will or other instrument to the power; (2) the will or other instrument contains a reference to the property which is the subject on which the power is to be executed; (3) where the provision in the will or other instrument executed by the donee of the power would otherwise be ineffectual or a mere nullity; in other words, the provision would have no operation except as an execution of the power. *In re Trust of Stork*, 233 Iowa 413, 421, 9 N.W.2d 273 (1943). For the purposes of section 450.3(4), a release of a general power is considered to be a transfer of the property subject to the power to those who would take in default if the power was not exercised.

86.5(11) *Qualified terminable interest property (QTIP).*

a. In general. Effective for estates of decedents dying on or after July 1, 1985, property passing from the decedent grantor-donor, which qualifies as qualified terminable interest property (QTIP) within the meaning of 26 U.S.C. Section 2056(b)(7)(B) is eligible to be treated for Iowa inheritance tax purposes, if an election is made, as passing in fee to the donee-grantee surviving spouse, in the estate of the grantor-donor decedent, subject to the provisions of law and this subrule. If the election is made, the qualified property, unless it is disposed of prior to death, shall be included in the gross estate of the surviving spouse and treated as passing in fee to those succeeding to the remainder interest in the qualified property.

b. Property transfers eligible. Five factors are relevant in determining whether property passing from a decedent grantor-donor is eligible for the Iowa qualified terminable interest election. They are: (1) the death of the decedent-transferor, but not necessarily the transfer, must have occurred on or after July 1, 1985; (2) the property must meet the qualifications required in 26 U.S.C. Section 2056(b)(7)(B), or in the case of a gift within three years prior to the decedent-transferor's death, the qualifications in 26 U.S.C. Section 2523(f); (3) a valid federal election must have been made on a required federal return with respect to the qualified property for federal estate tax purposes or, for federal gift tax purposes, if the transfer occurred within three years prior to the transferor's death; and (4) the property must be included in the decedent-transferor's gross estate for Iowa inheritance tax purposes, either because the transfer occurred at death or within three years prior to the transferor's death; and (5) Iowa must have constitutional nexus with the surviving spouse or QTIP property.

If property is not eligible for an Iowa qualified terminable interest election, or if eligible, but an Iowa election is not made, it is not included in the estate of the surviving spouse grantee-donee for inheritance tax purposes by reason of Iowa Code section 450.3. The fact that the qualified property is included in the estate of the surviving spouse for federal estate tax purposes does not necessarily mean the property is automatically included in the surviving spouse's Iowa gross estate.

The treatment of the qualified property in both the grantor-donor's and the surviving spouse's estates for Iowa inheritance tax purposes is determined by the Iowa election, or lack of an election, being made in the grantor-donor's estate.

This subrule is illustrated by the following examples:

EXAMPLE 1. Decedent A died testate, a resident of Iowa, July 2, 1995, leaving a surviving spouse, B, and two children, C and D. On February 1, 1992, A transferred by deed a 160-acre Iowa farm to spouse B for life, with the remainder at B's death to two children, C and D. An election was made under 26 U.S.C. Section 2523(f) to treat the gift of the 160-acre farm as passing entirely to B in fee.

Upon A's death the 160-acre farm is not part of A's gross estate either for federal estate or for Iowa inheritance tax purposes because the transfer was made more than three years prior to death. However, upon the death of B, the surviving spouse, the 160 acres is included in B's gross estate (unless disposed of prior to death) for federal estate tax purposes, but is not included in B's Iowa gross estate. The transfer by A took place more than three years prior to death, and therefore is not included in A's Iowa estate and is not eligible for an Iowa qualified terminable interest election.

EXAMPLE 2. On October 1, 1992, grantor A executed a revocable inter vivos trust which consisted of cash and a 160-acre Iowa farm. Under the terms of the trust agreement A was to receive the trust income for life and upon A's death the trustee was to pay the trust income to A's spouse, B, for life, with the power to invade the principal for B's care and support. Upon B's death the trust was to terminate and the balance of the corpus was to be paid to A's children, C and D. A died July 2, 1995, and the personal representative elected to treat the trust assets as passing entirely in fee to the surviving spouse, B, for federal estate tax purposes. An Iowa qualified terminable interest election was not made. In this fact situation, the election qualified the trust assets for the marital deduction for federal estate tax purposes. For Iowa inheritance tax purposes, since an Iowa election was not made, the trust assets are taxed on the basis of a life estate passing to B, the surviving spouse, and the remainder passing to the children, C and D. Upon B's death, the trust corpus will be included in B's estate for federal estate tax purposes, but not in B's estate for Iowa inheritance tax purposes, because an Iowa qualified terminable interest election was not made in A's estate.

c. The qualified terminable interest election—in general. The election to treat qualified terminable interest property as passing entirely in fee to the surviving spouse in the estate of the decedent grantor-donor is an affirmative act. In the event an election is not made, the qualified property will be treated as a life estate passing to the surviving spouse with a remainder over as provided in Iowa Code section 450.3(4).

An Iowa election cannot be made unless an election has been made on the same qualified property for federal estate tax purposes on a required federal return, or in case of a gift made within three years of the decedent grantor-donor's death, for federal gift tax purposes. However, even though a federal election has been made, the personal representative of the decedent grantor-donor's estate has the option

to either make or not to make the election with respect to the qualified property for Iowa inheritance tax purposes. It is sufficient for Iowa inheritance tax purposes that a valid federal election has been made. What constitutes a valid election for federal estate or gift tax purpose is determined under applicable federal law and practice and not by the department.

However, it is permissible for Iowa inheritance tax purposes to make an election for a smaller but not larger percentage of the qualified property than was made for federal estate or gift tax purposes. These general principles can be illustrated by the following examples:

EXAMPLE 1. Decedent-grantor A created a revocable inter vivos trust on October 15, 1992, which was funded by $200,000 in cash and a 160-acre Iowa farm worth $200,000. The trust provided that the trustee pay the income to A for life and upon A's death, the trustee was to pay the income to A's surviving spouse B for life, with power to invade the principal for B's care and support. Upon B's death the trust was to terminate and the balance of the principal was to be distributed to A's two children, C and D.

A died on July 2, 1995, and the principal of the trust is included in A's gross estate both for federal estate and Iowa inheritance tax purposes because the trust was revocable and A retained the income for life. A's personal representative elected to treat 50 percent of the trust assets as qualified terminable interest property for federal estate tax purposes. A's personal representative elected not to treat the qualified property as passing to B for Iowa inheritance tax purposes. This is permissible because the personal representative has the option to either elect or not to elect to treat 50 percent of the qualified property as passing in fee to the surviving spouse for Iowa inheritance tax purposes.

EXAMPLE 2. Same factual situation as Example 1. A's personal representative elects to treat only 25 percent of the qualified property as passing in fee to the surviving spouse for Iowa inheritance tax purposes. This is permissible because the personal representative is not required to make an election on all of the qualified terminable interest property on which the federal election has been made. It is sufficient that a federal election has been made for at least as large a percentage of the qualified property on which the Iowa election is made. However, an Iowa election cannot be made for a larger percentage of the qualified property than the percentage made on the federal election.

EXAMPLE 3. Same factual situation as Example 1. In this example, A's personal representative, for Iowa inheritance tax purposes, purports to elect to treat the $200,000 cash in the trust as passing in fee to the surviving spouse, but not the 160-acre Iowa farm, which is also valued at $200,000. Although the federal estate tax election is for 50 percent of the qualified property, the Iowa election is invalid even though it is made in respect to an asset which is equal in value to 50 percent of the trust principal. If the election is made for less than all of the qualified terminable interest property, the election must be for a fraction of all the qualified property. The personal representative is not permitted to select for the election some qualified assets and reject others. See Federal Estate Tax Regulation 20.2056-1(b).

d. The election—manner and form. The qualified terminable interest election shall be in writing and made by the personal representative of the decedent grantor-donor's estate on the Iowa inheritance tax return. The election once made shall be irrevocable. If the election is not made on the first inheritance tax return, the election may be made on an amended return, provided the amended return is filed on or before the due date of the return (taking into consideration any extensions of time granted to file the return and pay the tax due). The personal representative may make an election on a delinquent return, provided it is the first return filed for the estate. The filing for the purpose of protective election is not allowed. Failure to make the election on the first return filed after the due date has passed precludes making an election on a subsequent return. See 26 U.S.C. Section 2056(b)(7)(B)(V) and Internal Revenue Service Letter Ruling 8418005.

The election consists of two affirmative acts performed by the personal representative on the inheritance tax return: (1) by answering in the affirmative the question—Is the estate making a qualified terminable interest election with respect to the qualified property? and (2) by computing the share of the surviving spouse to include the qualified terminable interest property on which the election was made. In the event of an inconsistency in complying with the two requirements, the treatment given to the share of the surviving spouse shall be controlling.

e. Disposition of qualified property prior to death. A disposition of all or part of the qualified property, which was the subject of the qualified terminable interest election, prior to the death of the

surviving spouse, voids the election as to that portion of the property disposed of that is not retained by the surviving spouse. In this event, the portion of the qualified property not retained by the surviving spouse shall be taxed to those succeeding to the remainder interests in the disposed property as if the tax on the remainder interest had been deferred under Iowa Code sections 450.44 to 450.49. Except in the case of special use valuation property, the tax shall be based on the fair market value of the amount of the qualified property not retained by the surviving spouse at the time the property was disposed of. *In re Estate of Wickham,* 241 Iowa 198, 40 N.W.2d 469 (1950), see subrule 86.11(5) for taxation of remainder interests when the tax is deferred. The alternate valuation date cannot be used in computing the tax. See subrule 86.10(2). If QTIP property has been valued at its special use value under Iowa Code chapter 450B, and is disposed of prior to the death of the surviving spouse, the portion of the QTIP property not retained by the surviving spouse shall be valued for taxation as follows:

1. At its special use value at the time of its disposition, if the QTIP property remains in qualified use under 26 U.S.C. Section 2032A.

2. At its fair market value at the time of its disposition, if there is a cessation of the qualified use under 26 U.S.C. Section 2032A. In case there is a cessation of the qualified use, the recapture tax provisions of Iowa Code section 450B.3 shall not apply. The tax on the remainder interest is treated as a payment of tax deferred and subject to the rules on deferred tax and not a recapture, with interest, of the tax originally imposed in the decedent grantor-donor's estate.

f. Inclusion in the estate of the surviving spouse. Upon the death of the surviving spouse the qualified terminable interest property, which was the subject of an election, that was not disposed of prior to death, shall be included in the gross estate of the surviving spouse and be treated as if it passed in fee from the surviving spouse to those succeeding to the remainder interests. The included QTIP property will receive a stepped up basis for gain or loss as property acquired from a decedent. See 26 U.S.C. Section 1014(b)(10). The relationship of the surviving spouse to the owners of the remainder interest shall determine whether the individual exemptions provided for in Iowa Code section 450.9 apply and which tax rate in Iowa Code section 450.10 shall be applicable.

Qualified property included in the estate of the surviving spouse shall be valued as if it passed from the surviving spouse in fee and shall be valued either (1) at the time of the surviving spouse's death under the provisions of Iowa Code section 450.37 and rule 86.9(450), or at its special use value under Iowa Code chapter 450B and rule 86.8(450B), if the real estate is otherwise qualified; or (2) at the alternate valuation date under the provisions of Iowa Code section 450.37(1)*"b"* and rule 86.10(450), if the property is otherwise eligible.

This subrule can be illustrated by the following examples:

EXAMPLE 1. Decedent A died testate on July 2, 1997, survived by a spouse, B, aged 65, and two step-grandchildren, C and D. Under A's will all property was left in trust to pay all of the income to B for life. Upon B's death, the trust was to terminate and the principal was to be divided equally between C and D, who are the grandchildren of surviving spouse B. The personal representative elected to treat the trust assets as passing entirely in fee to surviving spouse B. The net corpus of the trust consists of a 160-acre farm valued at $250,000 and personal property valued at $200,000.

Tax on the basis of all property passing in fee to B

Share	Tax
$450,000	$0

EXAMPLE 2. Same facts as Example 1, with the exception that the personal representative did not make an Iowa qualified terminable interest election. In this fact situation, the trust assets are taxed on the basis of a life estate passing to the surviving spouse B with a remainder over to C and D.

Share	Tax
Spouse B: Life estate factor .42226	
$450,000 × .42226 = $190,017	-0-
C's share ½ remainder factor .57774	
$450,000 × .57774 ÷ 2 = $129,991.50	$15,498.73
D's share—same as C's share $129,991.50	$15,498.73
Total $450,000.00	$30,997.46

In Example 1, the qualified terminable interest election results in no inheritance tax. However, as shown in Example 2, it would have cost the step-grandchildren, C and D, $30,997.46 if the election had not been made.

EXAMPLE 3. B, the surviving spouse of A in Example 1, died testate, a resident of Iowa, on October 15, 1997. Under the terms of B's will, B's grandchildren, C and D, inherit B's entire estate in equal shares. B's net estate consists of $200,000 in personal property and a 160-acre Iowa farm with a value of $250,000 both of which were the subject of a qualified terminable interest election in A's estate and in which C and D own the remainder interest. B's net estate also consisted of $100,000 in intangible personal property which B owned in fee simple.

B's net estate for Iowa inheritance tax purposes consists of the following:

$200,000, personal property from A's estate.

$250,000, 160-acre farm from A's estate.

$100,000, owned by B in fee simple.

$550,000 Total

The shares of C and D and their tax owed in B's estate are computed as follows:

Share		Tax
Beneficiary C: ½ of the net estate, or		
	$275,000	$0
Beneficiary D: (same as C)	$275,000	$0
Totals	$550,000	$0

g. The QTIP tax credit and the credit for tax on prior transfers. The credit for the additional tax paid by the surviving spouse in the estate of the decedent grantor-donor on property, which was the subject of a qualified terminable interest election, is governed exclusively by the provisions of Iowa Code section 450.3 and these rules. The credit for tax paid on prior transfers allowable under Iowa Code section 450.10(6) shall not apply. However, property received by the surviving spouse from the estate of the decedent grantor-donor, which was not the subject of a qualified terminable interest election, is eligible for the credit for the tax paid on a prior transfer, if the conditions of Iowa Code section 450.10(6) are otherwise met.

86.5(12) *Annuities.*

a. General rule. Annuities in general are considered to be taxable under Iowa Code section 450.3(3) as a transfer made or intended to take effect in possession or enjoyment after the death of the grantor or donor. *In re Estate of English,* 206 N.W.2d 305 (Iowa 1973); *In re Endemann's Estate,* 307 N.Y. 100, 120 N.E.2d 514 (1954); *Cochrane v. Commission of Corps & Taxation,* 350 Mass. 237, 214 N.E.2d 283 (1966).

b. Exception to the general rule. Iowa Code section 450.4(5) provides for an exception to the general rule of taxability of annuities. Essentially, an exemption from Iowa inheritance tax is allowed if the following three elements are met: (1) payment under the plan must be in installments; (2) the annuity payment, in whole or in part, must be included as net income for Iowa income tax purposes under Iowa Code section 422.7; and (3) the annuity must be derived from a qualifying employee's pension or retirement plan. In essence, the portions of payments received under a qualified annuity plan that are subject to Iowa income tax are exempt from Iowa inheritance tax and the portions of such payments that are not subject to Iowa income tax are subject to Iowa inheritance tax. The exclusion makes reference only to installment payments and not to lump-sum distributions to a beneficiary. It is within the exclusion, if the payments, or a portion, are subject to Iowa income tax irrespective of the type of income tax treatment given the payments. Whether the payments are includable as ordinary income or receive capital gain treatment is not material to determining the exclusion. Iowa Code section 450.4(5) purports to exclude from inheritance tax what is subject to income tax and Iowa Code section 422.7(4) purports to exclude from income tax what is subject to inheritance tax. The apparent ambiguity can be resolved by an analysis of Iowa Code section 422.7(4). Iowa Code section 422.7(4) excludes from income tax the commuted value of the installment payments, not just a portion of the payments. "Commuted value" has been defined as the sum necessary to provide future payments as provided for in an annuity policy. In other words, the present value of the full amount of each annuity payment is the commuted value. This can be construed to mean only those estates which had been taxed for inheritance tax purposes on the full amount of each installment payment are entitled to the income tax exclusion. Annuities typically known as "employee pensions" are generally considered to be qualified plans for exemption for inheritance tax purposes. The qualified plans receive special income tax treatment during the period the annuity is being funded. This special tax treatment is based on the income being deferred to fund the annuity plan and also the postponement of the earnings from the fund until withdrawal. Payment of the proceeds from the annuity must not be in the form of one lump sum. Instead, payment must be in installments to qualify for the inheritance tax exemption. To constitute an installment, there must be two or more payments of the proceeds from the annuity. There is not a set time period imposed between payments to qualify for exemption.

EXAMPLE. The decedent, a resident of Iowa, had a qualified annuity purchased under a retirement plan through the decedent's Iowa employer. The beneficiary of the pension is the decedent's niece who is a resident of Iowa. A portion of the installment payments received by the niece will be included as net income pursuant to Iowa Code section 422.7. As a result, Iowa inheritance tax would not be imposed on the value of the portion of installment payments included as net income. However, the remaining portion of the installment payments not reported as net income pursuant to Iowa Code section 422.7 or subject to Iowa income tax at its computed value would be subject to Iowa inheritance tax—see Iowa Code sections 422.7(4), 422.7(31), and 450.4.

An exemption from Iowa inheritance tax for a qualified plan does not depend on the relationship of the beneficiary to the decedent. Payments under a qualified plan made to the estate of the decedent are exempt from Iowa inheritance tax. See *In re Estate of Heuermann*, Docket No. 88-70-0388 (September 21, 1989). In addition, it is not relevant for the purpose of determining the taxable or exempt status of payments under a qualified plan that the decedent rolled over or changed the terms of payment prior to death. Taxation or exemption of payments made under a qualified plan is determined at the date of the decedent's death. A rollover of money in a qualified plan that occurs after the death of the decedent is treated as a lump-sum payment for the purposes of inheritance tax.

Effective July 1, 2001, the value of a portion of any lump-sum or installment payment received by a beneficiary under an annuity which was purchased under an employee's pension or retirement plan, which is to be included as net income under Iowa Code section 422.7, is exempt from Iowa inheritance tax.

86.5(13) *Distribution of trust property.* Property of a trust can be divided into two or more trusts, or one or more separate trusts can be consolidated with one or more other trusts into a single trust by dividing the property in cash or in kind, including in undivided interests, by pro-rata or non-pro-rata

division or in any combination thereof. Division of property between trusts in this manner does not result in a "sale" of the divided property and a corresponding taxable gain.

This rule is intended to implement Iowa Code sections 422.7(4), 450.2, 450.3 as amended by 2003 Iowa Acts, chapter 95, section 3, 450.4(5), 450.8, 450.12, 450.37, 450.91, 633.699, and 633.703A.

701—86.6(450) The net estate.

86.6(1) *Liabilities deductible.*

a. Debts owing by decedent. A debt, to be allowed as a deduction in determining the net estate under Iowa Code section 450.12, must be the liability of the decedent and also be owing and not discharged at the time of the decedent's death. The amount allowable as a deduction is the principal amount due, plus interest accruing to the day of the decedent's death. If the decedent is not the only person liable for the debt, only a portion of the debt shall be deducted for inheritance tax purposes. The portion deducted is based on the number of solvent obligors. If a joint and several debt has more than one obligor and one obligor pays the remaining balance owed on the debt, the obligor who pays the remaining debt has a right of contribution for payment of the debt against the other solvent obligors. If the decedent is the obligor and the estate pays the remaining balance of the debt, the estate must list the right of contribution as an asset on the Iowa inheritance tax return. *In re Estate of Tollefsrud,* 275 N.W.2d 412 (Iowa 1979); *In re Estate of Thomas,* 454 N.W.2d 66 (Iowa App. 1990); *Estate of Pauline Bladt,* Department of Revenue and Finance, Hearing Office Decision, Docket No. 95-70-1-0174 (December 16, 1996). The term "debt owing by the decedent" is not defined in Iowa Code section 450.12. However, Iowa Code section 633.3(10) defines "debts" as including liabilities of the decedent which survive, whether arising in contract, tort, or otherwise.

The term "debt of the decedent" does not include taxes, which are an impost levied by authority of government upon its citizens or subjects for the support of the state. *Eide v. Hottman,* 257 Iowa 263, 265, 132 N.W.2d 755 (1965). Please note, that this is a nonexclusive example of "debt of the decedent." Promissory notes executed by the decedent without consideration are not debts of the decedent and are not allowable as a deduction in determining the net estate subject to tax. *In re McAllister's Estate,* 214 N.W.2d 142 (Iowa 1974). Payments to persons in compromise of their claim to a portion of the estate made by those persons who take from the decedent are not debts nor treated as expenses of settlement. *In re Estate of Bliven,* 236 N.W.2d 366, 371 (Iowa 1975); *In re Estate of Wells,* 142 Iowa 255, 259, 260, 120 N.W. 713 (1909).

Iowa Code section 450.12 and Internal Revenue Code Section 2053 provide that debts owing by the decedent to be allowable in computing the net estate must be the type of obligation of the decedent for which a claim could be filed and be enforced in the probate proceedings of the estate. *In re Estate of McMahon,*237 Iowa 236, 21 N.W.2d 581 (1946); *In re Estate of Laartz,* Cass County District Court, Probate No. 9641 (1973); *In re Estate of Tracy,* Department of Revenue and Finance, Hearing Officer Decision Docket No. 77-167-3-A (1977). Filing a claim in probate proceedings is not a prerequisite for the allowance of the liability as a deduction in computing the net estate. An allowable liability is deductible whether or not the liability is legally enforceable against the decedent's estate. Claims in probate founded on a promise or agreement are deductible only to the extent they were contracted bona fide and for an adequate and full consideration. *In re McAllister's Estate,* 214 N.W.2d 142 (Iowa 1974).

The debt must have ben paid prior to the filing of the inheritance tax return, or if the debt is not paid at the time the final inheritance tax return is filed (which is frequently the case in installment obligations) the burden is on the taxpayer to establish, if requested by the department, that the debt will be paid at a future date. The validity of a claim in probate based on a liability of the decedent is subject to review by the department. *In re Estate of Stephenson,* 234 Iowa 1315, 1319, 14 N.W.2d 684 (1944).

If any doubt or ambiguity exists whether an item is deductible or not, it is to be strictly construed against the taxpayer. Therefore, the burden is on the taxpayer to establish that an item is deductible. *In re Estate of Waddington*, 201 N.W.2d 77 (Iowa 1972).

The department may require the taxpayer to furnish reasonable proof to establish the deductible items such as, but not limited to, canceled checks in payment of an obligation, copies of court orders allowing

claims against the estate, attorney and fiduciary fees, allowances for the surviving spouse, and copies of notes and mortgages.

b. Mortgages—decedent's debt. A mortgage or other encumbrance securing a debt of the decedent on Iowa property in which the decedent had an interest is allowable as a deduction in determining the net estate in the same manner as an unsecured debt of the decedent, even though it may be deducted from different shares of the estate than unsecured debts. (See Iowa Code section 633.278.) However, if the debt of the decedent is secured by property located outside Iowa, which is not subject to Iowa inheritance tax, the debt is allowable as a deduction in determining the net estate, only in the amount the debt exceeds the value of the property securing the debt.

c. Mortgages—not decedent's debt. If the gross estate includes property subject to a mortgage or other encumbrance which secures a debt which is not enforceable against the decedent, the amount of the debt, including interest accrued to the day of death, is deductible, not as a debt of the decedent, but from the fair market value of the encumbered property. The deduction is limited to the amount the decedent would have had to pay to remove the encumbrance less the value, if any, of the decedent's right of recovery against the debtor. See *Home Owners Loan Corp. v. Rupe,* 225 Iowa 1044, 1047, 283 N.W. 108 (1938), for circumstances under which the right of subrogation may exist.

d. Mortgages—nonprobate property. A debt secured by property not subject to the jurisdiction of the probate court, such as, but not limited to, jointly owned property and property transferred within three years of death is deducted in the same manner as a debt secured by probate property. The fact the property is includable in the gross estate is the controlling factor in determining the deductibility of the debt (providing the debt is otherwise deductible).

e. Inheritance and accrued taxes.

(1) Inheritance tax. The inheritance tax imposed in the decedent's estate is not a tax on the decedent's property nor is it a state tax due from the estate. It is a succession tax on a person's right to take from the decedent. The tax is the obligation of the person who succeeds to property included in the gross estate. *Wieting v. Morrow*, 151 Iowa 590, 132 N.W. 193 (1911); *Waterman v. Burbank*, 196 Iowa 793, 195 N.W. 191 (1923). Therefore, inheritance tax is not a deduction in determining the net estate of the decedent in which the tax was imposed. However, if a taxpayer dies owing an inheritance tax imposed in another estate, the tax imposed in the prior estate, together with penalty and interest owing, if any, is a deduction as a state tax due in the deceased taxpayer's estate.

(2) Accrued taxes. In Iowa, property taxes accrue on the date that they are levied even though they are not due and payable until the following July 1. *In re Estate of Luke*, 184 N.W.2d 42 (Iowa 1971); *Merv E. Hilpipre Auction Co. v. Solon State Board*, 343 N.W.2d 452 (Iowa 1984).

Death terminates the decedent's taxable year for income tax purposes. Federal regulation Section 1.443-1(a)(2), 701—paragraph 89.4(9)*"b."* As a result, the Iowa tax on the decedent's income for the taxable year ending with the decedent's death is accrued on date of death.

In addition, any federal income tax for the decedent's final taxable year is owing at death, even though it is not payable until a later date. Therefore, both the decedent's state and federal income taxes, both for prior years and the year of death, are deductible in computing the taxable estate if unpaid at death.

f. Federal taxes. Deductible under this category are the federal estate taxes and federal taxes owing by the decedent including any penalty and interest accrued to the date of death. Prior to 1983, the federal estate tax was prorated based on the portion of federal estate tax attributable to Iowa property and that attributable to property located outside the state of Iowa. However, currently the deductibility of federal estate tax is treated like other liabilities of the estate. For estates with property located in Iowa and outside the state of Iowa, see the proration computation provided in 86.6(2). The deduction is limited to the net federal tax owing after all allowable credits, such as the federal credit for state death taxes paid, have been subtracted. Any penalty and interest imposed or accruing on federal taxes after the decedent's death is not deductible.

g. Funeral expenses. The deduction is limited to the expense of the decedent's funeral, which includes, but is not limited to, flowers, cost of meals, cards and postage. Expenses that are not deductible include, but are not limited to, family travel expenses. If the decedent at the time of death was liable for

the funeral expense of another, such expense is categorized as a debt of the decedent and is deductible subject to the same conditions as other debts of the decedent. *In re Estate of Porter,* 212 Iowa 29, 236 N.W. 108 (1931). A devise in the decedent's will, or a direction in a trust instrument, to pay the funeral expense of a beneficiary upon death is an additional inheritance in favor of the beneficiary and not a funeral expense deductible in the estate of the testator or grantor. Funeral expense is the liability of the estate of the person who has died. *In re Estate of Kneebs,* 246 Iowa 1053, 70 N.W.2d 539 (1955).

What constitutes a reasonable expense for the decedent's funeral depends upon the facts and circumstances in each particular estate. Factors to be considered include, but are not limited to: the decedent's station in life and the size of the estate, *Foley v. Brocksmit,* 119 Iowa 457, 93 N.W. 344 (1903); and the decedent's known wishes (tomb rather than a grave), *Morrow v. Durant,* 140 Iowa 437, 118 N.W. 781 (1908). Funeral expense includes the cost of a tombstone or monument. *In re Estate of Harris,* 237 Iowa 613, 23 N.W.2d 445 (1946). A reasonable fee or honorarium paid to the officiating clergy is a deductible funeral expense. *In re Estate of Kneebs,* 246 Iowa 1053, 1058, 70 N.W.2d 539 (1955). It is not a prerequisite for deductibility that a claim for funeral expenses be filed and allowed in the probate proceedings. It is sufficient that the expense be paid whether or not the claim is legally enforceable against the decedent's estate. The deduction allowable is limited to the net expense of the decedent's funeral, after deducting any expense prepaid by the decedent, burial insurance or death benefit, such as the death benefit allowed by the veterans administration or the social security administration.

h. Allowance for surviving spouse and dependents. An allowance for the support of the surviving spouse and dependents to be deductible in determining the net estate for taxation must meet two conditions: First it must be allowed and ordered by the court and second it must be paid from the assets of the estate that are subject to the jurisdiction of the probate court. The allowance is not an additional exemption for the spouse or children. It is part of the costs of administration of the decedent's estate. Iowa Code section 633.374; *In re Estate of DeVries,* 203 N.W.2d 308, 311 (Iowa 1972). Upon request of the department, the taxpayer shall submit a copy of the order of the court providing for the allowance and copies of canceled checks or other documents establishing payment of the allowance.

For the purpose of determining the shares of heirs or beneficiaries for inheritance tax, the allowance is a charge against the corpus of the shares of the estate even though it is paid from the income of the shares. The allowance is included with the other debts and charges for the purpose of abatement of shares to pay the debts and charges of the estate.

i. Court costs. The deduction under this category is limited to Iowa court costs only. *In re Estate of Evans,* 246 Iowa 893, 68 N.W.2d 289 (1955). The term "court costs" is not synonymous with "costs of administration" as defined in Iowa Code section 633.3(8) or "administration expenses" under Section 2053(a) of the Internal Revenue Code. See federal regulation Section 20.2053-3(d). "Court costs" is a narrower term. Court costs are part of costs of administration in Iowa and are an expense of administration under the Internal Revenue Code, but not all costs or expenses of administration are court costs. For example, interest payable on an extension of time to pay the federal estate tax is a cost of administration in the estate in which the federal estate tax is imposed, but it is not part of court costs, and therefore not deductible for inheritance tax purposes.

In general, court costs include only those statutory fees and expenses relating directly to the probate proceeding, carried on the clerk's docket, and paid routinely in the process of closing every estate. *In re Estate of Waddington,* 201 N.W.2d 77, 79 (Iowa 1972). The term "court costs" since August 15, 1975, also includes the expenses of selling property. See Iowa Code sections 450.12 and 633.3(8) and Internal Revenue Code Section 2053 for further details.

j. Additional liabilities that are deductible. Subject to subrules 86.6(4) and 86.6(5), the only liabilities deductible from the gross value of the estate include debts owing by the decedent at the time of death, local and state taxes accrued before the decedent's death, federal estate tax and federal taxes owing by the decedent, a sum for reasonable funeral expenses, the allowance for surviving spouse and minor children granted by the probate court or its judge, court costs, and any other administration expenses allowable pursuant to Section 2053 of the Internal Revenue Code.

(1) Criteria for deductible administration expenses under Section 2053 of the Internal Revenue Code. Administration expenses must meet certain requirements to be allowable deductions under Section 2053 of the Internal Revenue Code. To be allowable deductions, expenses must meet the following conditions:

1. The expenses must be payable out of property subject to claims;

2. The expenses are allowable (not based on the deductible amount) by the law governing the administration of the decedent's estate;

3. The expenses are actually and necessarily incurred in the administration of the estate. Administration expenses are limited to those expenses incurred in the settlement of the estate and the transfer of the estate property to beneficiaries and trustees, including an executor that is a trustee. Expenses that are not essential to the settlement of the estate, but are incurred for the individual benefit of the heirs, legatees, or devisees, may not be taken as deductions; and

4. The allowable amount of expenses for deduction is limited to the value of property included in the decedent's gross estate and subject to claims, plus amounts paid out of the property not subject to claims against the decedent's estate, on or before the last day of the ninth month after death or within any granted extension(s) of time for filing the return. "Property subject to claims" is defined as the property includable in the gross estate which bears the burden or would bear the burden under law for payment of the deduction in the final adjustment and settlement of the decedent's estate, less an initial deduction allowable under Section 2054 of the Internal Revenue Code, for any losses for casualty or theft attributable to such property and incurred during the settlement of the estate.

(2) Allowable administration expenses. Subject to the limitations in paragraph *"a"* of this subrule, allowable administration expenses under Section 2053 of the Internal Revenue Code include costs and fees incurred in the collection of assets, payment of debts, distribution of property to entitled persons, executor's commission, attorney's fees, and miscellaneous administration expenses. Miscellaneous administration expenses include costs or fees for surrogates, accountants, appraisers, clerk hire, storing or maintaining property of the estate, and selling the property of the estate. Expenses for preserving and caring for the property do not include expenditures for additions or improvements or expenses for a longer period than the executor is reasonably required to retain the property. Expenses for selling property of the estate are limited to those for sales that are necessary in order to pay the decedent's debts, expenses of administration, and taxes, preserve the estate, or effect distribution. Expenses for selling the property include brokerage fees or auctioneer fees and may include the expenses for a sale of an item in a bona fide sale that is below the fair market value of the item. The allowable selling expense for an item sold below its fair market value to a dealer in such items is the lesser of the amount by which the fair market value of the item on the valuation date exceeded the proceeds from the sale or the amount by which the fair market value of the item on the date of the sale exceeded the proceeds of the sale.

86.6(2) *Prorated liabilities.*

a. The amount of the liability that is deductible depends upon the situs of the property in the gross estate.

If part of the property included in the gross estate has a situs in a jurisdiction other than Iowa, only a pro rata amount of the liabilities specified in Iowa Code section 450.12, with the exception of liabilities secured by a lien on property, is deductible in computing the net estate for Iowa inheritance tax purposes. The amount deductible is computed by multiplying the total amount of the unsecured liabilities by a fraction of which the Iowa situs property in the gross estate is the numerator and the total gross estate is the denominator. For the purpose of apportionment of the liabilities, the term "gross estate" means the gross estate for federal estate tax purposes. Provided, if the federal gross estate formula produces a grossly distorted result then, subject to the approval of the department, an alternate apportionment formula may be used either by the department or the taxpayer which fairly represents the particular facts of the estate.

Liabilities secured by a lien on property are allocated to the state of situs. If the secured liability exceeds the value of the security, any excess is prorated in the same manner as an unsecured liability.

b. *Liabilities that must be prorated.* If the gross estate includes property with a situs outside Iowa, the liabilities that must be prorated are: (1) court costs, both foreign and domestic; (2) unsecured debts

of the decedent regardless of where the debt was contracted; (3) federal and state income tax, including the tax on the decedent's final return, federal estate, gift and excise tax, and state and local sales, use and excise tax; (4) expenses of the decedent's funeral and burial, regardless of the place of interment; (5) allowances for the surviving spouse and children allowed by the probate court in Iowa or another jurisdiction; (6) the expense of the appraisal of property for the purpose of assessing a state death or succession tax; (7) the fees and necessary expenses of the personal representative and the personal representative's attorney allowed by order of court, both foreign and domestic; (8) the costs of the sale of real and personal property, both foreign and domestic, if not otherwise included in court costs; and (9) the amount paid by the personal representative for a bond, both foreign and domestic.

c. Liabilities that are not prorated. Liabilities secured by a lien on property included in the gross estate are to be allocated in full to the state of situs. These are liabilities secured by: (1) mortgages, mechanic's liens and judgments; (2) real estate taxes and special assessments on real property; (3) liens for an obligation to the United States of America, a state or any of its political subdivisions; and (4) any other lien on property imposed by law for the security of an obligation.

d. Prorated cash bequests. If the distribution of an estate includes pecuniary legacies with an estate with property located in and outside Iowa, or the estate includes specific bequests from a fund containing property located in and outside Iowa, then the Iowa inheritance tax liability for those legacies or bequests will be based on the pro rata portion of the property of the estate located in Iowa. For further details see Estate of Dennis M. Billingsley, Iowa District Court of Emmet County, Case No. 13394 (July 15, 1982).

86.6(3) *Liabilities deductible from property not subject to the payment of debts and charges.*

a. Estates with all of the property located in Iowa. Subject to the special provisions in 86.6(3)*"c,"* the liabilities deductible under Iowa Code section 450.12 may be deductible in whole or in part from property includable in the gross estate for inheritance tax purposes which under Iowa debtor-creditor law is not liable for the payment of the debts and charges of the estate under the following terms and conditions:

(1) The application of liabilities.

1. The liabilities must be paid. If a liability is not paid in full, the amount deductible is limited to the amount paid. If the amount claimed is not certified as paid by the time the inheritance tax return is filed, the statute requires that the director must be satisfied that the liabilities, or portions thereof deductible, will be paid.

2. The liability can be deducted only from property that is included in the gross estate for Iowa inheritance tax purposes. This rule would exclude, among others, that portion of joint tenancy property which is excluded from the gross estate, wrongful death proceeds, the first $10,000 in gifts to each donee made within three years of death and property with a situs outside Iowa.

3. The property included in the gross estate that is under Iowa debtor-creditor law subject to the payment of the deductible liabilities must first be applied to the liabilities, and only after this property has been exhausted can the excess liabilities be applied to the remaining property included in the gross estate.

4. Any excess liabilities remaining unpaid after exhausting the property subject to the payment of the liabilities must be allocated to the remaining property included in the gross estate for inheritance tax purposes on the basis of the ratio the value of each person's share of the remaining property in the gross estate bears to the total value of the remaining property included in the gross estate.

(2) General rules.

1. The source of the funds used for payment of the excess liabilities is not relevant to the allowance of the deduction. It is sufficient for the allowance of the deduction that the liability be paid.

2. The applicability of the statute is limited to the deduction for inheritance tax purposes of those liabilities listed in Iowa Code subsection 450.12(1). It neither enlarges nor diminishes the rights of creditors under existing Iowa law.

3. The statute is not limited to estates which are probated and subject to the jurisdiction of the probate court. The statute also applies to estates which file an inheritance tax return for a tax clearance (CIT proceedings) or those otherwise not probated such as, but not limited to, inter vivos trusts whose

assets are subject to inheritance tax, estates consisting of joint tenancy with right of survivorship property, estates whose assets consist of transferred property with a reserved life use or interest, estates whose assets consist of gifts made within three years of the decedent's death and estates consisting entirely of qualified terminal interest property (QTIP) in the estate of the surviving spouse.

The statute will apply to any estate when any share of the estate will remain taxable after being reduced by the liabilities in Iowa Code subsection 450.12(1) which are lawfully charged to the share and the deduction of any statutory exemption. Excess liabilities must be prorated over all of the property not subject to debts and charges regardless of whether or not the property is part of a taxable share.

b. Estates with part of the property located outside Iowa. Iowa Code section 450.12(2) and subrule 86.6(2) require that the liabilities deductible be prorated in those estates where a portion of the property included in the gross estate has a situs outside Iowa. Subject to the special provision in 86.6(3)*"c,"* in these estates the portion of the liabilities deductible which is allocated to the Iowa property under the proration formula must first be applied to the Iowa situs property which is subject to the payment of the liabilities. Any portion of the liabilities allocated to Iowa remaining unpaid may then be applied to the other Iowa property included in the gross estate subject to the same limitations provided for in 86.6(3)*"a"*(1)"1" to "4."

c. Special rule for liabilities secured by property included in the gross estate. If a liability which is deductible under Iowa Code section 450.12(1)*"a"* is secured by property included in the gross estate, then the liability is deductible from the specific property that secures the liability, regardless of whether or not the property is subject to the payment of the ordinary debts and charges of the estate. If the liability exceeds the value of the property that secures it and is the obligation of the decedent, then any excess liability is deductible under the same rules that govern unsecured obligations.

86.6(4) *Resident and nonresident deductions distinction abolished.* Effective for estates of decedents dying on or after July 1, 1983, the domicile of the decedent is not relevant in determining whether a liability is deductible in computing the net estate. In the case of *In re Estate of Evans*, 246 Iowa 893, 68 N.W.2d 289 (1955) applies only to estates of decedents dying prior to July 1, 1983. However, the amount of the liability that is deductible depends upon the situs of the property in the gross estate.

If part of the property included in the gross estate has a situs in a jurisdiction other than Iowa, only a pro rata amount of the liabilities specified in Iowa Code section 450.12, with the exception of liabilities secured by a lien on property, is deductible in computing the net estate for Iowa inheritance tax purposes. The amount deductible is computed by multiplying the total amount of the unsecured liabilities by a fraction of which the Iowa situs property in the gross estate is the numerator and the total gross estate is the denominator.

Liabilities secured by a lien on property are allocated to the state of situs. If the secured liability exceeds the value of the security, any excess is prorated in the same manner as an unsecured liability.

This rule is intended to implement Iowa Code sections 450.7(1), 450.12, 450.22, 450.24, 450.38, 450.89, 633.278, and 633.374.

701—86.7(450) Life estate, remainder and annuity tables—in general. For estates of decedents dying on or after July 4, 1965, and prior to January 1, 1986, the value of a life estate in property, an annuity for life and the value of a remainder interest in the property, shall be computed by the use of the commissioners' standard ordinary mortality table at the rate of 4 percent per annum.

86.7(1) *Tables for life estates and remainders.* This subrule only applies to estates of decedents dying on or after July 4, 1965, and prior to January 1, 1986. The two factors on the same line on the next page added together equal 100 percent. Multiply the corpus of the estate by the first factor to obtain the value of the life estate. Use the second factor to obtain the value of the remainder interest in the corpus if the tax is to be paid within 12 months after the death of the decedent who created the life estate remainder. If the tax on the remainder is to be paid prior to the death of the life tenant, but after one year from the decedent's death, use the remainder factor opposite the age of the life tenant at the time the tax is to be paid.

Age of Life Tenant	Life Estate	Remainder
0	.90164	.09836
1	.89936	.10064
2	.89900	.10100
3	.89676	.10324
4	.89396	.10604
5	.89104	.10896
6	.88792	.11208
7	.88464	.11536
8	.88120	.11880
9	.87756	.12244
10	.87380	.12620
11	.86984	.13016
12	.86576	.13424
13	.86152	.13848
14	.85716	.14284
15	.85268	.14732
16	.84808	.15192
17	.84336	.15664
18	.83852	.16148
19	.83356	.16644
20	.82840	.17160
21	.82308	.17692
22	.81756	.18244
23	.81184	.18816
24	.80592	.19408
25	.79976	.20024
26	.79336	.20664
27	.78672	.21328
28	.77984	.22016
29	.77268	.22732
30	.76524	.23476
31	.75756	.24244
32	.74960	.25040
33	.74132	.25868
34	.73280	.26720
35	.72392	.27608
36	.71476	.28524

Age of Life Tenant	Life Estate	Remainder
37	.70532	.29468
38	.69560	.30440
39	.68560	.31440
40	.67536	.32464
41	.66488	.33512
42	.65412	.34588
43	.64316	.35684
44	.63192	.36808
45	.62044	.37956
46	.60872	.39128
47	.59680	.40320
48	.58464	.41536
49	.57228	.42772
50	.55972	.44028
51	.54700	.45300
52	.53412	.46588
53	.52104	.47896
54	.50788	.49212
55	.49452	.50548
56	.48108	.51892
57	.46756	.53244
58	.45392	.54608
59	.44024	.55976
60	.42652	.57348
61	.41280	.58720
62	.39908	.60092
63	.38538	.61462
64	.37174	.62826
65	.35817	.64183
66	.34471	.65529
67	.33140	.66860
68	.31829	.68171
69	.30542	.69458
70	.29282	.70718
71	.28048	.71952
72	.26840	.73160
73	.25653	.74347

Age of Life Tenant	Life Estate	Remainder
74	.24481	.75519
75	.23322	.76678
76	.22175	.77825
77	.21045	.78955
78	.19938	.80062
79	.18863	.81137
80	.17826	.82174
81	.16830	.83170
82	.15876	.84124
83	.14960	.85040
84	.14078	.85922
85	.13224	.86776
86	.12395	.87605
87	.11584	.88416
88	.10785	.89215
89	.09990	.90010
90	.09192	.90808
91	.08386	.91614
92	.07563	.92437
93	.06715	.93285
94	.05826	.94174
95	.04866	.95134
96	.03801	.96199
97	.02595	.97405
98	.01275	.98725
99	.00000	1.00000

86.7(2) *Table for an annuity for life.* This subrule only applies to estates of decedents dying on or after July 4, 1965, and prior to January 1, 1986. To find the present value of an annuity or a given amount (specified sum) for life, annualize the annuity payments and multiply the result by the annuity factor in Column 3 opposite the age at the nearest birthday of the person receiving the annuity.

Column 1 Age in Years	Column 2 Life Expectancy in Years	Column 3 4% Annuities $1.00
0	68.30	22.541
1	67.78	22.484
2	66.90	22.475
3	66.00	22.419
4	65.10	22.349

Column 1 Age in Years	Column 2 Life Expectancy in Years	Column 3 4% Annuities $1.00
5	64.19	22.276
6	63.27	22.198
7	62.35	22.116
8	61.43	22.030
9	60.51	21.939
10	59.58	21.845
11	58.65	21.746
12	57.72	21.644
13	56.80	21.538
14	55.87	21.429
15	54.95	21.317
16	54.03	21.202
17	53.11	21.084
18	52.19	20.963
19	51.28	20.839
20	50.37	20.710
21	49.46	20.577
22	48.55	20.439
23	47.64	20.296
24	46.73	20.148
25	45.82	19.994
26	44.90	19.834
27	43.99	19.668
28	43.08	19.496
29	42.16	19.317
30	41.25	19.131
31	40.34	18.939
32	39.43	18.740
33	38.51	18.533
34	37.60	18.320
35	36.69	18.098
36	35.78	17.869
37	34.88	17.633
38	33.97	17.390
39	33.07	17.140
40	32.18	16.884

Column 1 Age in Years	Column 2 Life Expectancy in Years	Column 3 4% Annuities $1.00
41	31.29	16.622
42	30.41	16.353
43	29.54	16.079
44	28.67	15.798
45	27.81	15.511
46	26.95	15.218
47	26.11	14.920
48	25.27	14.616
49	24.45	14.307
50	23.63	13.993
51	22.82	13.675
52	22.03	13.353
53	21.25	13.026
54	20.47	12.697
55	19.71	12.363
56	18.97	12.027
57	18.23	11.689
58	17.51	11.348
59	16.81	11.006
60	16.12	10.663
61	15.44	10.320
62	14.78	9.9770
63	14.14	9.6346
64	13.51	9.2935
65	12.90	8.9543
66	12.31	8.6178
67	11.73	8.2851
68	11.17	7.9572
69	10.64	7.6355
70	10.12	7.3204
71	9.63	7.0121
72	9.15	6.7101
73	8.69	6.4133
74	8.24	6.1203
75	7.81	5.8304

Column 1 Age in Years	Column 2 Life Expectancy in Years	Column 3 4% Annuities $1.00
76	7.39	5.5437
77	6.98	5.2612
78	6.59	4.9845
79	6.21	4.7158
80	5.85	4.4566
81	5.51	4.2076
82	5.19	3.9689
83	4.89	3.7399
84	4.60	3.5194
85	4.32	3.3061
86	4.06	3.0988
87	3.80	2.8961
88	3.55	2.6963
89	3.31	2.4975
90	3.06	2.2981
91	2.82	2.0965
92	2.58	1.8907
93	2.33	1.6787
94	2.07	1.4564
95	1.80	1.2166
96	1.51	.9503
97	1.18	.6487
98	.83	.3189
99	.50	.0000

86.7(3) *Annuity tables when the term is certain.* This table is to be used to compute the present values of two types of annuities: (1) the use of property for a specific number of years and (2) an annuity of a specific amount of money for a number of years certain. To compute the present value of the first annuity, multiply the value of property by 4 percent. Then multiply the result by the annuity factor opposite the number of years of the annuity. Multiply the value of the property by the remainder factor for the present value of the remainder. For the second annuity annualize the payments and multiply the result by the annuity factor opposite the number of years of the annuity. Subtract the present value of the annuity from the value of the property from which the annuity is funded for the remainder value.

Number of Years	Present Value of an Annuity of One Dollar, Payable at the End of Each Year, for a Certain No. of Years	Present Value of One Dollar, Payable at the End of a Certain Number of Years
	ANNUITY	REMAINDER
1	$0.96154	$0.961538
2	1.88609	0.924556

Number of Years	Present Value of an Annuity of One Dollar, Payable at the End of Each Year, for a Certain No. of Years	Present Value of One Dollar, Payable at the End of a Certain Number of Years
	ANNUITY	REMAINDER
3	2.77509	0.888996
4	3.62990	0.854804
5	4.45182	0.821927
6	5.24214	0.790315
7	6.00205	0.759918
8	6.73274	0.730690
9	7.43533	0.702587
10	8.11090	0.675564
11	8.76048	0.649581
12	9.38507	0.624597
13	9.98565	0.600574
14	10.56312	0.577475
15	11.11839	0.555265
16	$11.65230	$0.533908
17	12.16567	0.513373
18	12.65930	0.493628
19	13.13394	0.474642
20	13.59033	0.456387
21	14.02916	0.438834
22	14.45112	0.421955
23	14.85684	0.405726
24	15.24696	0.390121
25	15.62208	0.375117
26	15.98277	0.360689
27	16.32959	0.346817
28	16.66306	0.333477
29	16.98371	0.320651
30	17.29203	0.308319

86.7(4) *Tables for life estates and remainders for estates of decedents dying on or after January 1, 1986.* For estates of decedents dying on or after January 1, 1986, the following tables are to be used in computing the value of a life estate, an annuity for life and the value of a remainder in property. The table is based on the commissioners' standard ordinary mortality tables of life expectancy, with no distinction being made between the life expectancy of males and females of the same age. As a result, the sex of the recipient is not relevant in computing the value of the property interest received. *Arizona Governing Committee for Tax Deferred Annuity and Deferred Compensation Plans v. Norris,* 463 U.S. 1073, 103 S.Ct. 3492, 77 L.Ed.2d 1236 (1983). Valuation is based on the age at the nearest birthday. The following tables are to be applied in the same manner as specified in subrule 86.7(1).

1980 CSO-D MORTALITY TABLE
BASED ON BLENDING 50% MALE—50% FEMALE
(PIVOTAL AGE 45)
AGE NEAREST BIRTHDAY
4% INTEREST

AGE OF LIFE TENANT	LIFE ESTATE	REMAINDER	AGE OF LIFE TENANT	LIFE ESTATE	REMAINDER
0	.91904	.08096	50	.61730	.38270
1	.91919	.08081	51	.60576	.39424
2	.91689	.08311	52	.59399	.40601
3	.91443	.08557	53	.58199	.41801
4	.91186	.08814	54	.56979	.43021
5	.90914	.09086	55	.55740	.44260
6	.90629	.09371	56	.54483	.45517
7	.90329	.09671	57	.53206	.46794
8	.90014	.09986	58	.51906	.48094
9	.89683	.10317	59	.50582	.49418
10	.89338	.10662	60	.49234	.50766
11	.88977	.11023	61	.47862	.52138
12	.88603	.11397	62	.46471	.53529
13	.88219	.11781	63	.45064	.54936
14	.87828	.12172	64	.43647	.56353
15	.87429	.12571	65	.42226	.57774
16	.87027	.12973	66	.40801	.59199
17	.86617	.13383	67	.39372	.60628
18	.86200	.13800	68	.37936	.62064
19	.85773	.14227	69	.36489	.63511
20	.85333	.14667	70	.35031	.64969
21	.84878	.15122	71	.33565	.66435
22	.84404	.15596	72	.32098	.67902
23	.83912	.16088	73	.30639	.69361
24	.83399	.16601	74	.29199	.70801
25	.82865	.17135	75	.27787	.72213
26	.82306	.17694	76	.26405	.73595
27	.81724	.18276	77	.25053	.74947
28	.81117	.18883	78	.23727	.76273
29	.80487	.19513	79	.22422	.77578
30	.79833	.20167	80	.21134	.78866
31	.79155	.20845	81	.19866	.80134
32	.78451	.21549	82	.18625	.81375
33	.77723	.22277	83	.17419	.82581
34	.76970	.23030	84	.16260	.83740
35	.76192	.23808	85	.15151	.84849
36	.75389	.24611	86	.14093	.85907

AGE OF LIFE TENANT	LIFE ESTATE	REMAINDER	AGE OF LIFE TENANT	LIFE ESTATE	REMAINDER
37	.74562	.25438	87	.13081	.86919
38	.73710	.26290	88	.12108	.87892
39	.72836	.27164	89	.11163	.88837
40	.71940	.28060	90	.10235	.89765
41	.71022	.28978	91	.09309	.90691
42	.70083	.29917	92	.08368	.91632
43	.69122	.30878	93	.07390	.92610
44	.68138	.31862	94	.06350	.93650
45	.67131	.32869	95	.05221	.94779
46	.66101	.33899	96	.03994	.96006
47	.65046	.34954	97	.02678	.97322
48	.63966	.36034	98	.01321	.98679
49	.62860	.37140	99	.00000	1.00000

86.7(5) *Table for an annuity for life —for estates of decedents dying on or after January 1, 1986.* The following table is to be used in computing the present value of an annuity of a given amount (specified sum) for life in estates of decedents dying on or after January 1, 1986. The table is to be used in the same manner as the table listed in subrule 86.7(2).

1980 CSO-D MORTALITY TABLE
BASED ON BLENDING 50% MALE—50% FEMALE
(PIVOTAL AGE 45)
AGE NEAREST BIRTHDAY
4% INTEREST

AGE IN YEARS	LIFE EXPECTANCY IN YEARS	ANNUITIES $1.00	AGE IN YEARS	LIFE EXPECTANCY IN YEARS	ANNUITIES $1.00
0	73.30	22.976	50	27.45	15.433
1	72.56	22.980	51	26.61	15.144
2	71.63	22.922	52	25.77	14.850
3	70.70	22.861	53	24.94	14.550
4	69.76	22.796	54	24.13	14.245
5	68.82	22.728	55	23.32	13.935
6	67.87	22.657	56	22.52	13.621
7	66.93	22.582	57	21.73	13.301
8	65.98	22.504	58	20.95	12.976
9	65.03	22.421	59	20.18	12.645
10	64.07	22.334	60	19.41	12.308
11	63.12	22.244	61	18.66	11.966
12	62.16	22.151	62	17.91	11.618
13	61.21	22.055	63	17.18	11.266
14	60.27	21.957	64	16.45	10.912
15	59.32	21.857	65	15.75	10.557

AGE IN YEARS	LIFE EXPECTANCY IN YEARS	ANNUITIES $1.00	AGE IN YEARS	LIFE EXPECTANCY IN YEARS	ANNUITIES $1.00
16	58.39	21.757	66	15.05	10.200
17	57.46	21.654	67	14.38	9.843
18	56.53	21.550	68	13.71	9.484
19	55.61	21.443	69	13.06	9.122
20	54.69	21.333	70	12.42	8.758
21	53.77	21.219	71	11.79	8.391
22	52.85	21.101	72	11.17	8.024
23	51.93	20.978	73	10.57	7.660
24	51.01	20.850	74	10.00	7.300
25	50.08	20.716	75	9.44	6.947
26	49.15	20.576	76	8.91	6.601
27	48.23	20.431	77	8.39	6.263
28	47.30	20.279	78	7.90	5.932
29	46.36	20.122	79	7.42	5.605
30	45.43	19.958	80	6.96	5.283
31	44.50	19.789	81	6.52	4.967
32	43.57	19.613	82	6.09	4.656
33	42.64	19.431	83	5.68	4.355
34	41.72	19.242	84	5.29	4.065
35	40.79	19.048	85	4.93	3.788
36	39.87	18.847	86	4.58	3.523
37	38.94	18.640	87	4.26	3.270
38	38.03	18.428	88	3.95	3.027
39	37.11	18.209	89	3.66	2.791
40	36.21	17.985	90	3.37	2.559
41	35.30	17.756	91	3.09	2.327
42	34.41	17.521	92	2.81	2.092
43	33.52	17.280	93	2.52	1.848
44	32.63	17.035	94	2.22	1.588
45	31.75	16.783	95	1.90	1.305
46	30.88	16.525	96	1.56	.999
47	30.01	16.261	97	1.20	.670
48	29.15	15.991	98	.84	.330
49	28.30	15.715	99	.50	.000

This rule is intended to implement Iowa Code sections 450.51 and 450.52.

701—86.8(450B) Special use valuation.

86.8(1) *In general.* Effective for estates of decedents dying on or after July 1, 1982, real estate which has been valued at its special use value under 26 U.S.C. Section 2032A for computing the federal estate tax is eligible to be valued for inheritance tax purposes at its special use value, subject to the limitations imposed by statute and these rules. Special use valuation under the provisions of Iowa Code chapter 450B is in lieu of valuing the real estate at its fair market value in the ordinary course of trade under Iowa Code section 450.37. The valuation of real estate at its special use value must be made on the entire parcel of the real estate in fee simple. The value of undivided interests, life or term estates and

remainders in real estate specially valued is determined by (1) applying the life estate, remainder or term tables to the special use value—see rule 86.7(450), or (2) by dividing the special use value by the decedent's fractional interest in case of an undivided interest. The eligibility of real estate for special use value is not limited to probate real estate. Real estate transfers with a retained life use or interest, real estate held in joint tenancy, real estate transferred to take effect in possession or enjoyment at death, real estate held by a partnership or corporation and real estate held in trust are noninclusive examples of real estate not subject to probate that may be eligible for special use valuation.

86.8(2) *Definitions and technical terms.* References in this subrule to sections of the Internal Revenue Code mean sections of the Internal Revenue Code of 1954 as defined (and periodically updated) in Iowa Code section 422.3(5). Technical terms such as, but not limited to, "qualified real property"; "qualified use"; "cessation of qualified use"; "disposition"; "qualified heir"; "member of the family"; "farm"; "farming purpose"; "material participation"; and "active management" are examples of technical terms which have the same meaning for Iowa special use valuation under Iowa Code chapter 450B as the terms are defined and interpreted in 26 U.S.C. Section 2032A. It is the purpose of Iowa special use valuation to conform as nearly as possible to the special use valuation provisions of 26 U.S.C. Section 2032A, as can be done within the framework of an inheritance tax instead of an estate tax.

86.8(3) *Eligibility requirements.* The eligibility requirements for valuing real estate at its special use value for computing inheritance tax are the same as the eligibility requirements of 26 U.S.C. Section 2032A for the purpose of computing the federal estate tax imposed by 26 U.S.C. Section 2001. Real estate cannot be specially valued for inheritance tax purposes unless it is also eligible and is valued at its special use value for federal estate tax purposes. However, even though real estate is specially valued for federal estate tax purposes, the estate has the right to elect or not to elect to value real estate at its special use value for computing the inheritance tax. Real estate otherwise qualified will be eligible for special use valuation for Iowa inheritance tax purposes if a valid special use valuation election has been made on the federal estate tax return. What constitutes a valid election for federal estate tax purposes is determined under applicable federal law and practice and is not determined by the department.

86.8(4) *Real estate—not eligible.*

a. Real estate otherwise qualified is not eligible to be specially valued for inheritance tax purposes if it is not includable in the federal gross estate. For example, a gift of real estate may not be part of the federal gross estate. However, the real estate may be a taxable gift, but the real estate would not qualify for special valuation.

b. Real estate, otherwise qualified, will not be eligible for the special use valuation provisions of Iowa Code chapter 450B, if the owner of a remainder, or other future property interest in the real estate, defers the payment of the inheritance tax until the termination of the prior estate. Special use valuation is made at the date of the decedent's death, while Iowa Code section 450.44 requires the future interest to be revalued at the time of the termination of the prior estate when the tax is deferred. See *In re Estate of Wickham,* 241 Iowa 198, 40 N.W.2d 469 (1950); department subrules 86.2(8) and 86.2(9). In addition, when the tax has been deferred the life estate-remainder factor to be used in computing the tax on the future interest is the factor existing at the time of payment or the termination of the prior estate, while the additional inheritance tax under special use value is based on the life estate-remainder factor at the time of death. See *In re Estate of Millard,* 251 Iowa 1982, 105 N.W.2d 95 (1960). A second valuation after death is not within the scope of either 26 U.S.C. Section 2032A or Iowa Code chapter 450B. Since all persons with an interest in the real estate must sign the agreement specified in 86.8(5)*"e,"* the deferral of the inheritance tax on a future property interest disqualifies all of the property interests in the real estate because the future property interest is not eligible to be specially valued in case of a deferral of the tax.

86.8(5) *Election and agreement.*

a. *In general.* The election to specially value real estate under the provisions of Iowa Code chapter 450B must be made by the fiduciary for the estate or trust on the inheritance tax return or on a statement attached to the return. The election may be made on a delinquent return. However, once made, the election is irrevocable. The election is an affirmative act. Therefore, failure to make an election on the

inheritance tax return shall be construed as an election not to specially value real estate under Iowa Code chapter 450B.

b. Form—election. The election to value real estate at its special use value shall comply with the requirements of 26 U.S.C. Section 2032A(d) and federal regulation Section 20.2032A-8. An executed copy of the election filed as part of the federal estate tax return and accepted by the Internal Revenue Service will fulfill the requirements of this subrule.

c. Content of the election. The election must be accompanied by the agreement specified in 86.8(5)*"e"* and shall contain the information required by federal regulation Section 20.2032A-8. Submission of an executed copy of the information required by federal regulation Section 20.2032A-8(3) in support of the election to specially value property for federal estate tax purposes will fulfill the requirements of this subrule.

d. Protective elections. A protective election may be made to specially value qualified real property for inheritance tax purposes. The availability of special use valuation is contingent upon values, as finally determined for federal estate tax purposes, meeting the requirements of 26 U.S.C. Section 2032A. The protective election must be made on the inheritance tax return and shall contain substantially the same information required by federal regulation Section 20.2032A-8(b). Submission of an executed copy of the protective election filed and accepted for federal estate tax purposes will fulfill the requirements of this subrule.

If it is found that the real estate qualifies for special use valuation as finally determined for federal estate tax purposes, an additional notice of election must be filed within 60 days after the date of the determination. The notice must set forth the information required in 86.8(5)*"c"* and is to be attached, together with the agreement provided for in 86.8(5)*"e,"* to an amended final inheritance tax return. Failure to file the additional notice within the time prescribed by this subrule shall disqualify the real estate for special use valuation.

e. Agreement. An agreement must be executed by all parties who have any interest in the property to be valued at its special use value as of the date of the decedent's death. In the agreement, the qualified heirs must consent to personal liability for the additional inheritance tax imposed by Iowa Code section 450B.3 in the event of early disposition or cessation of the qualified use. All other parties with an interest in the property specially valued must consent to liability for the additional inheritance tax to the extent of the additional tax imposed on their share of the property no longer eligible to be specially valued. The liability of the qualified heir or the successor qualified heir for the additional inheritance tax is not dependent on the heir's share of the property specially valued, but rather it is for the amount of the additional inheritance tax imposed on all of the shares of the parties with an interest in the property no longer eligible for special use value.

f. Failure to file the election and agreement. Failure to file with the inheritance tax return either the election provided for in 86.8(5)*"b"* or the agreement specified in 86.8(5)*"e"* shall disqualify the property for the special use value provisions of Iowa Code chapter 450B. In the event of disqualification, the property shall be valued for inheritance tax purposes at its market value in the ordinary course of trade under the provisions of Iowa Code section 450.37.

86.8(6) *Value to use.*

a. Special use value. The special use value established and accepted by the Internal Revenue Service for the qualified real property shall also be the value of the qualified real property for the purpose of computing the inheritance tax on the shares in the specially valued property.

b. Fair market value when a recapture tax is imposed. The additional inheritance tax imposed by Iowa Code section 450B.3, due to the early disposition or cessation of the qualified use, is based on the fair market value of the qualified real property at the time of the decedent's death as reported and established in the election to value the real estate at its special use value, subject to the limitations in 86.8(6)*"c."*Iowa Code chapter 450B makes reference only to the use of federal values. Therefore, a fair market value appraisal made by the Iowa inheritance tax appraisers cannot be used in computing the amount of the additional inheritance tax imposed unless it is accepted by the Internal Revenue Service. Iowa Code section 450.37 only applies to property which is not specially valued under Iowa Code chapter 450B.

c. Fair market value limitations. The following fair market value limitations shall govern the computation of the additional inheritance tax imposed, if any. If at the time of its disposition or cessation of the qualified use, the fair market value of the property which is the subject of the additional tax is:

1. Greater than its fair market value at the time of the decedent's death, the additional tax is computed on the fair market value at death.

2. Less than its fair market value at the time of death but greater than the special use value, the additional tax is computed on the lesser fair market value.

3. Equal to or less than the special use value of the property, no additional inheritance tax is imposed. In this event, no refund is allowed. Iowa Code chapter 450B makes reference only to the imposition of additional inheritance tax, not to an additional benefit if the agreement is not fulfilled.

As a result, failure to fulfill the agreement provided for in 86.8(5)*"e"* may, in certain circumstances, result in a lower tax liability than would have been the case had the special use valuation election not been made.

The rule for computing the additional federal estate tax under 26 U.S.C. Section 2032A(c) is different. See lines 8 to 11, Additional Federal Estate Tax Form 706-A and IRS letter ruling 8215036 (1982).

86.8(7) *Imposition of additional inheritance tax.*

a. In general. If within ten years after the decedent's death there is a disposition of the property or a cessation of the qualified use within the meaning of 26 U.S.C. Section 2032A(c), an additional inheritance tax is imposed on the shares in the qualified real property specially valued, subject to the limitation in 86.8(6)*"c."* Failure to begin the special use within two years after the decedent's death disqualifies the property for the special use valuation provisions of Iowa Code chapter 450B. However, the ten-year period for imposing an additional inheritance tax is not extended by the period of time between the decedent's death and the beginning date of the special use. The rule for federal estate tax purposes is different. The ten-year period for federal estate tax purposes is extended by the period of time between the decedent's death and the time the special use begins. See 26 U.S.C. Section 2032A(c)(7)(A)(ii). In this respect, the Iowa law does not conform to the federal statute. See Iowa Code section 450B.3.

b. Additional tax on life or term estates and remainders. The additional tax on life or term estates and remainders in real estate which no longer qualifies for special use valuation is computed as if the special use valuation had not been elected. Therefore, if age or time is a determining factor in computing the additional tax, it is the age or time at the date of the decedent's death which governs the computation, not the age or time at the date of the disposition or cessation of the qualified use. Therefore, subrule 86.2(7) implementing Iowa Code section 450.44 does not apply. Iowa Code section 450B.3 makes no provision for deferral of the additional tax on a future property interest in real estate which is no longer eligible to be specially valued.

c. Interplay of the additional inheritance tax with the Iowa estate tax. In the event of an early disposition or cessation of the qualified use of the specially valued real estate, the federal estate tax is recomputed with a corresponding recomputation of the credit allowable under 26 U.S.C. Section 2011 for state death taxes paid. If the maximum allowable credit for state death taxes paid as recomputed is greater than the total inheritance tax obligation on all of the shares of the estate, including the shares which have not been revalued, the amount of the maximum credit for state death taxes paid is the additional tax. See Iowa Code section 451.2.

d. Computation of the tax—full disposition or full cessation. If there is an early disposition or a cessation of the qualified use of all of the real estate specially valued, the inheritance tax on the shares of all persons who succeed to the real estate from the decedent are recomputed based on the fair market value of the specially valued real estate. See 86.8(6)*"c"* on which market value to use. The total revalued share of each person who had an interest in the disqualified real property is the value of that person's share of the property not specially valued plus the revalued share of the special use property. The tax is then recomputed based on the applicable exemption, if any, allowable under Iowa Code section 450.9 and the rates of tax specified in Iowa Code section 450.10 in effect at the time of the decedent's death. A credit is allowed against the amount of the recomputed tax, without interest, for the tax paid which was based on the special use value.

EXAMPLES: Disposition of all of the qualified real property.

It is assumed in these examples that the real estate has qualified for special use valuation and that prior to the date of disposition, the real estate remained qualified.

EXAMPLE. Farmer A, a widower, died July 1, 1992, a resident of Iowa, and by will left all of his property to his three nephews in equal shares. Nephew B operates the farm. Nephew C lives in Des Moines, Iowa, and Nephew D lives in Phoenix, Arizona. At the time of death, Farmer A's estate consisted of:

Asset	Fair Market Value	Special Use Value
160-acre Iowa farm	$ 480,000 ($3,000 per acre)	$ 160,000 ($1,000 per acre)
Grain and livestock	90,000	90,000
Stocks, bonds and bank accounts	80,000	80,000
Gross Estate	$ 650,000	$ 330,000
Less: Deductions without federal estate tax	25,000	25,000
Net estate before federal estate tax	$ 625,000	$ 305,000

COMPUTATION OF THE INHERITANCE TAX
UNDER SPECIAL USE VALUATION

Net estate before federal estate tax	$305,000
Less: Federal estate tax	4,120
Net Estate	$300,880

TAX ON SHARES

Beneficiary	Share		Tax
To each nephew	$101,666.67		$11,250.00
Total Tax Paid	$11,250 × 3	=	$33,750.00

On October 15, 1995, Nephew B, the qualified heir, retires from farming and all three nephews sell the farm to a nonrelated party for $3,200 per acre, or $512,000. Under 86.8(6)*"c,"* the $3,000 per acre valuation at death governs the computation of the additional inheritance tax.

COMPUTATION OF THE ADDITIONAL INHERITANCE TAX DUE TO THE EARLY
DISPOSITION OF THE QUALIFIED USE PROPERTY

Net estate before federal estate tax	$625,000
Less: Revised federal estate tax ($9,250 was deducted for credit for state death taxes paid)	0
Net Estate	$625,000

Tax on Shares	Share	Tax
To each nephew $208,333.33	$27,250.00	
Less tax previously paid	11,250.00	
	16,000.00	
Additional tax due		

Tax on Shares	Share	Tax
Interest at 10% from 4-03-93 to due date 4-15-96		$4,734.40
Total Due Each Nephew		$20,734.40

Total additional tax and interest for all three shares $20,734.40 × 3 = $62,203.20.

NOTE: In this example, the total additional tax for the three nephews before a credit for tax previously paid is $27,250.00 × 3 or $81,750.00. The credit for state death taxes paid on the revalued federal estate is $9,250.00. Therefore, the larger amount is the additional tax, before the credit for tax previously paid is deducted. The additional inheritance or Iowa estate tax bears interest at 10 percent beginning the last day of the ninth month after the decedent's death until the due date, which is six months after the disposition of the specially valued real estate. Interest accrues on delinquent tax at the same rate. Since interest only accrues on unpaid tax, the amount of the interest in this example would have been less if the tax had been paid prior to its due date, April 15, 1996.

e. Computation of the tax—partial disposition or cessation of the qualified use.

(1) First partial disposition or cessation of the qualified use. Compute the maximum amount of the additional tax that would be due from each person who has an interest in the portion of the real estate no longer eligible to be specially valued, as if there were an early disposition or cessation of the qualified use of all that person's specially valued real estate. The additional tax on a partial disposition or cessation of the qualified use is computed by multiplying the maximum amount of the additional tax by a fraction of which the fair market value of the portion no longer eligible is the numerator and the fair market value of all of that person's specially valued real estate is the denominator. The resulting amount is the tax due on the first partial disposition or cessation of the qualified use.

EXAMPLE 1. First partial additional tax. Assume the fair market value of three parcels of real estate owned by a single qualified heir (brother of the decedent) is $100,000 and the special use value of the three parcels is $75,000. The qualified heir is in the 10 percent tax bracket. FMV in this example means fair market value.

Parcel 1, fair market value	$25,000
Parcel 2, fair market value	50,000
Parcel 3, fair market value	25,000

Computation of Maximum Amount of Additional Tax

Tax based on fair market value ($100,000 × 10%)	$10,000
Tax based on special use value ($75,000 × 10%)	7,500
Maximum amount of additional tax	$ 2,500

Computation on the First Partial Additional Tax

Parcel 1, sale to an unrelated party

FMV of Parcel 1	$ 25,000	×	$2,500	=	$625
FMV of all special use property	$100,000		(Maximum add'l tax)		(First add'l tax)

(2) Second or any succeeding disposition or cessation of the qualified use. Compute the maximum amount of the additional tax as outlined in the first partial disposition or cessation of the qualified use. Increase the numerator of the fraction used to determine the first additional tax by the fair market value of the second partial disposition or cessation of the qualified use. The denominator remains the same. The computed tax is then credited with the tax paid on the first partial disposition or cessation of the qualified use. Succeeding partial dispositions or cessations of the qualified use are handled in the same

manner by increasing the numerator of the fraction and a corresponding increase in the credit for the prior additional tax paid.

Computation of the second and succeeding partial dispositions or cessations of the qualified use can be illustrated by the following examples:

EXAMPLE 2. Second partial additional tax. Same facts as in Example 1. In this example, Parcel 2 is sold to an unrelated party.

Computation of the Second Partial Additional Tax

FMV of Parcels 1 & 2	$ 75,000	×	$2,500 (Maximum add'l tax)	=	$1,875
FMV of all special use property	$100,000				
Less tax paid on Parcel 1					625
Second Add'l Tax					$1,250

EXAMPLE 3. Third partial additional tax. Same facts as in Example 1. In this example, Parcel 3 is sold to an unrelated party.

Computation of the Third Partial Additional Tax

FMV of Parcels 1, 2, & 3	$100,000	×	$2,500 (Maximum add'l tax)	=	$2,500
FMV of all specially valued real estate	$100,000				
Less tax paid on Parcels 1 & 2					1,875
Third Additional Tax					$ 625

f. No additional tax on shares not revalued. The shares of persons who received no interest in the real estate which is no longer eligible to be specially valued are not subject to an additional tax. Therefore, on the amended final inheritance tax return only the shares of the persons receiving interest in the real estate need to be revalued when computing the additional tax under this subrule.

EXAMPLE. Decedent A, a widower and resident of Iowa, died testate July 1, 1992, survived by nephew B and niece C. His estate consisted of two Iowa farms and certain personal property. Under A's will, the niece and nephew share equally in the personal property. Nephew B received one farm and niece C the other one. Nephew B, a qualified heir, elected to specially value his farm and niece C did not. The inheritance tax was paid on this basis. Five years after A's death, nephew B quits farming and sells his inherited farm to an unrelated party, thus incurring an additional inheritance tax. Only nephew B owes an additional tax. Niece C's share in the estate is not revalued.

86.8(8) *Return for additional inheritance tax.* The return reporting the additional inheritance or Iowa estate tax imposed due to the early disposition or cessation of the qualified use shall conform as nearly as possible to the federal additional estate tax return, Form 706A, as can be done within the framework of an inheritance tax on shares instead of an estate tax. The return must be executed by the qualified heir and filed with the Iowa Department of Revenue, Hoover State Office Building, Des Moines, Iowa 50319.

86.8(9) *Due date for paying the additional inheritance tax.* The additional inheritance or Iowa estate tax imposed by Iowa Code section 450B.3 or 451.2 and the return for the additional tax is due six months after the early disposition or cessation of the qualified use of the real estate specially valued.

86.8(10) *No extension of time to file or pay.* Iowa Code chapter 450B makes no provision for an extension of time to file the return for the additional tax and pay the additional inheritance tax or Iowa estate tax due. Therefore, if the return for the additional tax is not filed or the additional inheritance or Iowa estate tax is not paid within six months after the early disposition or cessation of the qualified use, the return or the tax is delinquent and subject to penalty under subrule 86.8(13).

86.8(11) *Interest on additional tax.* The additional inheritance or Iowa estate tax imposed under Iowa Code section 450B.3 or 451.2 accrues interest at the rate of 10 percent per annum until paid commencing the last day of the ninth month after the decedent's death. The variable prime interest rate made applicable to inheritance tax by 1981 Iowa Acts, chapter 131, sections 15 and 16, on real estate not specially valued, does not apply to interest due on the additional tax imposed by Iowa Code section 450B.3 or 451.2. In addition, the federal rule that interest only accrues on the additional federal estate tax when an election is made under 26 U.S.C. Section 1016(c) to increase the basis for gain or loss on the real estate no longer eligible to be specially valued, has no application to Iowa special use valuation. In this respect the Iowa law does not conform to the federal statute.

86.8(12) *Receipt for additional tax.* The receipt for the additional tax imposed by Iowa Code section 450B.3 or 451.2, is separate and distinct from the receipt for inheritance tax required by Iowa Code section 450.64. The receipt must identify the property which was the subject of the early disposition or cessation of the qualified use, the owners of the property, the qualified heir, the amount paid and whether the additional tax paid is for a partial or full disposition or cessation of the qualified use.

86.8(13) *Penalty for failure to file or failure to pay.* Department rules 701—Chapter 10, pertaining to the penalty for failure to timely file the return or to pay the inheritance tax imposed by Iowa Code chapter 450, also apply where there is a failure to timely file the return reporting the additional inheritance or Iowa estate tax or to pay the additional tax due imposed by Iowa Code section 450B.3 or 451.2.

86.8(14) *Duties and liabilities.*

a. Duty to report an early disposition or cessation of the qualified use. The agent designated in the agreement required by 86.8(5)*"e"* has the duty to notify the department of any early disposition or cessation of the qualified use of the property on or before the due date of the additional inheritance tax. An executed copy of the notice required by federal regulation Section 20.2032A(c)(4) will satisfy this subrule.

b. Liability for payment of the tax. The qualified heir or the heir's successor is personally liable for all the additional inheritance or Iowa estate tax imposed under Iowa Code section 450B.3 or 451.2. It is the qualified heir's duty to collect the additional Iowa inheritance or Iowa estate tax from each person whose share was revalued. In respect to the additional tax, the duty of the qualified heir is the same as the duty of the fiduciary of an estate or trust under Iowa Code section 450.5, for the regular inheritance or Iowa estate tax. See subrule 86.2(1) regarding the responsibility of the fiduciary of an estate or trust. While the qualified heir is primarily liable for the payment of all of the additional tax, each person who has an interest in the real estate no longer eligible to be specially valued is also liable under the agreement provided for in 86.8(5)*"e"* for additional tax on that person's revalued share. Therefore, if the qualified heir fails to pay the additional Iowa estate tax or the additional tax imposed on any revalued share, the department may proceed to collect the delinquent tax from the person who received the share. The liability for the additional tax due from each person who had an interest in the revalued real estate is the same as the liability for the inheritance tax on property not specially valued. See *Eddy v. Short,* 190 Iowa 1376, 1380, 1832, 179 N.W. 818 (1920); *In re Estate of Stone,* 132 Iowa 136, 109 N.W. 455 (1906).

c. Books and records. It is the duty of the qualified heir to keep books and records necessary to substantiate the continued eligibility of the real estate for special use valuation. Upon request, the agent designated in the agreement shall furnish the department sufficient information relating to the use, ownership and status of the real estate to enable the department to determine whether there has been an early disposition or cessation of the qualified use.

86.8(15) *Special lien for additional inheritance tax.*

a. In general. The special lien created by Iowa Code section 450B.6 is separate and distinct from the lien provided for in Iowa Code section 450.7, for the inheritance tax imposed at the time of the decedent's death. The special lien is to secure any additional inheritance or Iowa estate tax that may be due within the ten-year period after the decedent's death, should there be an early disposition or cessation of the qualified use. The inheritance tax lien provided for in Iowa Code section 450.7 is only to secure the tax imposed at the time of the decedent's death on the transfer of property including property that is specially valued. If an additional tax is imposed for the early disposition or cessation of the qualified use, it is secured by the lien created by Iowa Code section 450B.6.

b. Form of the notice of the special lien. The notice of the special lien for additional inheritance or Iowa estate tax created by Iowa Code section 450B.6 must conform as nearly as possible to the special use valuation lien provided for in 26 U.S.C. Section 6324B.

c. Notice of lien. Unlike the lien provided for in Iowa Code section 450.7, notice of the special lien for additional inheritance or Iowa estate tax must be recorded before it has priority over subsequent mortgagees, purchasers or judgment creditors. The special lien is perfected by recording the notice of the special lien in the recorder's office in the county where the estate is being probated (even though the real estate may be located in a different county). Failure to perfect the special lien by recording as provided for in Iowa Code section 450B.6 divests the qualified real property from the lien in the event of a sale to a bona fide purchaser for value.

d. Duration of the special lien. The special lien continues:

(1) Until the additional inheritance or Iowa estate tax is paid, or ten years after the date the additional tax is due, whichever first occurs, if there is an early disposition or cessation of the qualified use, or

(2) For ten years after the decedent's death on all other property which has been specially valued.

e. Release of the lien. The special lien for additional inheritance tax:

(1) May be released at any time in whole or in part upon adequate security being given to secure the additional tax that may be due, if any.

(2) Is released by payment of the additional inheritance or Iowa estate tax imposed by Iowa Code section 450B.3 or 451.2, on the property which was the subject of an early disposition or cessation of the qualified use.

(3) Is released when it becomes unenforceable by reason of lapse of time.

f. Application to release the lien. Ten years after the decedent's death, unless there is an additional tax remaining unpaid, the qualified heir may submit to the department an application in writing for release of the lien on the real estate specially valued. The application must contain information necessary to enable the department to determine whether or not the special use valuation lien should be released. Supporting documentation may include a copy of the federal release. If, after audit of the application, it is determined the real estate remained eligible for special valuation, the department will release the lien.

86.8(16) *Valuation of the decedent's interest in corporations, partnerships and trusts —special rules.* If the decedent's interest in a corporation, partnership or a trust has been valued at its special use valuation under 26 U.S.C. Section 2032A for federal estate tax purposes, it is also eligible to be valued at its special use value for inheritance tax purposes, subject to the limitation imposed by statute and these rules. See Internal Revenue Service letter ruling 8108179 (1980) for guidelines in valuing the decedent's interest. Other factors indicative of value, such as the value of other assets, net dividend-paying capacity, book value, profit and loss statements and net worth must also be taken into account in arriving at the value of the decedent's interest for inheritance tax purposes. See Revenue ruling 59-60, 1959-1 C.B. 243 for the factors to be considered in valuing closely held corporate stock. In the event the decedent's interest in a corporation, partnership or trust is no longer eligible to be specially valued, the additional inheritance tax will be imposed on the fair market value of the decedent's interest in the same manner and subject to the same limitations as other property specially valued.

86.8(17) *Audits, assessments and refunds.* Subrules 86.3(1) to 86.3(3) providing for the audit, assessment and refund of the inheritance tax imposed by Iowa Code sections 450.2 and 450.3, shall also be the rules for the audit, assessment and refund of the additional inheritance or Iowa estate tax imposed by Iowa Code section 450B.3 or 451.2.

86.8(18) *Appeals.* Rule 86.4(450) providing for an appeal to the director and a subsequent appeal to district court under the Iowa administrative procedure Act for disputes involving the inheritance tax imposed by Iowa Code chapter 450 shall also be the rule for appeal for disputes concerning special use valuation and the additional inheritance or Iowa estate tax imposed by Iowa Code chapters 450B and 451.

This rule is intended to implement Iowa Code sections 450B.1 to 450B.7 and 451.2.

701—86.9(450) Market value in the ordinary course of trade. Fair market value of real or personal property is established by agreement or the appraisal and appeal procedures set forth in Iowa Code section 450.37 and subrules 86.9(1) and 86.9(2). If the value is established by agreement, the agreement may be to accept the values of such property as submitted on the Iowa inheritance tax return, to accept a negotiated value or to accept the values as finally determined for federal estate tax purposes. Values submitted on an inheritance tax return constitute an offer regarding the value of the property by the estate. An inheritance tax clearance that is issued based upon property values submitted on an inheritance tax return constitutes an acceptance of those values on that return. An agreement to accept negotiated values or accept values as finally determined for federal estate tax purposes must be an agreement between the department of revenue, the personal representative, and the persons who have an interest in the property. If an agreement cannot be reached regarding the valuation of real property, then the department may request, within 30 days after the return is filed, an appraisal pursuant to Iowa Code sections 450.37 and 450.27 and subrule 86.9(2). Effective for estates with decedents dying on or after July 1, 2004, if an agreement cannot be reached regarding the valuation of real property, then the department may request, within 60 days after the return is filed with the department, an appraisal pursuant to Iowa Code sections 450.37 and 450.27 and subrule 86.9(2). If an appraisal is not requested within the required period, then the value listed on the return is the agreed value of the real property. If an agreement cannot be reached regarding the valuation of personal property, the personal representative or any person interested in the personal property may appeal for a revision of the department's value as set forth in Iowa Code section 450.37 and subrule 86.9(2). Any inheritance tax clearance granted by the department may be subject to revision based on federal audit adjustments. Absent an agreement to the contrary, the six-month extension of the statute of limitations for assessing Iowa inheritance tax based on federal audit adjustments is limited to federal audit adjustments that directly affect Iowa inheritance tax and involve Iowa inheritance tax law that incorporates Internal Revenue Code provisions—see Iowa Code section 450.94(5) and *Kelly-Springfield Tire Co. v. Iowa State Board of Tax Review,* 414 N.W.2d 113 (Iowa 1987).

86.9(1) *In general.* With the exception of real estate which has been specially valued under Iowa Code chapter 450B, property included in the gross estate for inheritance tax purposes must be valued under the provisions of Iowa Code section 450.37 at its market value in the ordinary course of trade. See rule 701—86.10(450) for the rule governing the market value in the ordinary course of trade if the alternate valuation date is elected. "Market value in the ordinary course of trade" and "fair market value" are synonymous terms. *In re Estate of McGhee,* 105 Iowa 9, 74 N.W. 695 (1898). Fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. The fair market value of a particular item of property includable in the decedent's gross estate is not to be determined by a forced sale price. Nor is the fair market value of an item of property to be determined by the sale price of the item in a market other than that in which such item is most commonly sold to the public, taking into account the location of the item whenever appropriate. See federal regulation Section 20.2031(1)(b) and Iowa Code section 441.21(1)*"b"* for similar definitions of fair market value.

a. Values not to be used. Other kinds of value assigned to property such as, but not limited to, assessed value of real estate for property tax purposes, cost price, true value, or book value are only relevant in computing the value of the property for inheritance tax purposes, to the extent they may be properly used in the determination of fair market value or special use value. *In re Estate of McGhee*, 105 Iowa 9, 74 N.W.695 (1898). Fair market value cannot be determined alone by agreement between the persons succeeding to the decedent's property. Also, fair market value cannot be determined alone by setting out in the decedent's will the price for which property can be sold. *In re Estate of Fred W. Rekers*, Probate No. 28654, Black Hawk County District Court, July 26, 1972.

b. Date of valuation. Unless the alternate valuation date is elected under Iowa Code section 450.37, or the tax has been deferred according to Iowa Code sections 450.44 to 450.49, all property includable in the gross estate must be valued at the time of the decedent's death for the purpose of computing the tax imposed by Iowa Code section 450.2. Subject to the two exceptions listed, any

appreciation or depreciation of the value of an asset after the decedent's death is not to be taken into consideration. *Insel v. Wright County*, 208 Iowa 295, 225 N.W.378 (1929).

86.9(2) *Market value—how determined.*

a. In general. The fair market value of an item of property, both real and personal, that is included in the gross estate for inheritance tax purposes is expressed in the property's monetary equivalent. The process used to determine fair market value presupposes the voluntary exchange of the item in a market for its equivalent in money. *Hetland v. Bilstad*, 140 Iowa 411, 415, 118 N.W. 422 (1908). The fact the item of property is not actually sold or exchanged or even offered for sale is not relevant. It is sufficient for establishing the item's value to arrive at the specific dollar amount that a seller would voluntarily accept in exchange for the property and the amount that a buyer would be willing to pay. *Juhl v. Greene County Board of Review*, 188 N.W.2d 351 (Iowa 1971). It is assumed when determining this specific dollar amount, which is the item's fair market value, that the seller is desirous of obtaining the highest possible price for the property and that the buyer does not wish to pay more than is absolutely necessary to acquire the property.

The item of property must be valued in a market where it is customarily traded to the public. See federal regulation 20.2031-1(b). Therefore, if an item of property is valued in a market which is not open to the general public, the party asserting the value in the restricted market has the burden to prove by a preponderance of the evidence that the value in the restricted market is the item's fair market value.

The distinction between a public and a restricted market can be illustrated by the following:

EXAMPLE 1: Under the provisions of the decedent's will, the personal representative of the estate is given the power to sell the decedent's property at either a public or private sale. Pursuant to this power, the personal representative sold the decedent's household goods at public auction held on a specific day and time which was widely advertised both in the newspaper in the locality where the decedent lived and also by sale bills posted in numerous public places in the decedent's community. The household goods sold at auction for $2,500. The fair market value of the household goods on the day of sale is $2,500. The public auction is a market where such items are commonly sold and the public had knowledge of the impending sale. The public was also invited to bid and the items to be sold were available for inspection.

EXAMPLE 2. Pursuant to an agreement between the beneficiaries of the estate, the personal representative sold the decedent's household goods and personal effects at an auction where only members of the decedent's family were permitted to bid. The items sold for $2,500, which may or may not be the fair market value of the property. Family pride, sentiment, and other personal considerations may have entered into the selling price. In this type of sale the burden is on the personal representative to prove that the selling price is the fair market value of the items sold.

b. Values established by recognized public markets.

(1) Stocks, bonds, and notes. Items of personal property such as, but not limited to, corporate stock, bonds, mutual funds, notes, and commodities which are traded on one or more of the nation's stock or commodity exchanges shall be valued under the provisions of Federal Estate Tax Regulation 20.2031-2, which regulation is incorporated in and made a part of this subrule by reference.

Individuals who have a registration of a security indicating sole ownership by one individual or multiple ownership by two or more individuals with a right of survivorship and not as tenants in common, may obtain a registration in beneficiary form as provided in the uniform transfer on death security registration Act as provided in Iowa Code section 633.800. A "registering entity" under this Act must provide notice to the department of revenue of all reregistrations made pursuant to this Act. Such notice must include the name, address, and social security number of the decedent and all transferees. Until the division of the security, after the death of all the owners, multiple beneficiaries surviving the death of all the owners hold their interest as tenants in common. If no beneficiary survives the death of all the owners, the security belongs to the estate of the deceased sole owner of the estate of the last to die of the multiple owners.

(2) Local elevator and sale barn prices. The fair market value of grain and livestock may be determined either by the quoted price from the grain elevator or sale barn in the community where the grain or livestock is located or by the price quoted from the nearest commodity exchange, less the customary delivery discount.

(3) Public auctions by the court. The fair market value of an item may be established in a public market other than a market which has a permanent location and which holds sales at periodic stated intervals. It is common for estates or the probate court to hold a public auction to sell estate property and if the sale meets certain criteria the selling price received in this type of public auction will establish the fair market value of the property. Factors in an estate or court sale which tend to establish the selling price as one at fair market value include but are not limited to the time and place of the sale were well advertised; the public was invited and encouraged to bid; members of the decedent's family or business associates were not given special consideration as to price or terms of sale; and the terms of sale were comparable to those offered at sales in a regularly established public market.

(4) Sales in a regularly established market. Sales made in a regularly established market pursuant to Iowa Code section 633.387 would qualify as a sale at fair market value for inheritance tax purposes.

c. Private sales that may establish fair market value. Private sales of estate assets may establish the fair market value of the item depending on the facts and circumstances surrounding each sale. Factors which tend to establish a private sale as one at fair market value include but are not limited to:

(1) Sales made by a recognized broker who receives a commission from the seller based on the selling price and who has exercised diligence in obtaining a buyer.

(2) Sales made by the personal representative to nonfamily members after a good-faith effort was made to solicit bids from persons who are known to be interested in buying that particular kind of property.

(3) Sales made by the attorney or the personal representative after the item of property was advertised for sale in a newspaper of general circulation or in trade publications and a good-faith effort was made to obtain the best possible price.

(4) Sales made by the personal representative when the sale price is the price quoted on one of the nation's stock or commodity exchanges.

(5) Private sales made by the personal representative to members of the decedent's family or business associates are suspect due to personal, family, or business reasons, but nevertheless may constitute a sale at fair market value, depending on the facts and circumstances surrounding each sale. The personal representative has the burden to establish that this kind of private sale is a sale at fair market value. Factors which have a bearing on whether this type of private sale is one at fair market value include, but are not limited to, the following: Did the decedent's will give a sale or price preference to a member of the decedent's family or business associate? Were the terms of sale more advantageous than terms that would be given to the general public? Was a good-faith effort made to solicit bids from other persons known to be interested in buying that particular kind of property? Was the sale made as part of a family settlement of a will contest or dispute on a claim against the estate?

d. Fair market value—no regularly established market.

(1) In general. Certain items of personal property such as, but not limited to, closely held corporate stock, real estate contracts of sale, private promissory notes, accounts receivable, partnership interests, and choses in action are not customarily bought and sold in a public market. Occasional sales of these items of personal property at infrequent intervals do not establish a market for this kind of personal property, but the lack of a regular market does not indicate that the item is of no value. When there is not a regularly established market to use as a reference point for value, it is necessary to create a hypothetical market to determine fair market value. The factors used to create a hypothetical market vary with the kind of property being valued and depend on the facts and circumstances in each individual case.

(2) Fair market value of closely held corporate stock. A closely held corporation is a corporation whose shares are owned by a relatively limited number of stockholders. Often the entire stock issue is held by members of one family or by a small group of key corporate officers. Because of the limited number of stockholders and due to a family or business relationship, little, if any, trading in the shares takes place. There is, therefore, no established market for the stock. Sales that do occur are usually at irregular intervals and seldom reflect all of the elements of a representative transaction as is contemplated by the term fair market value. The term "fair market value" has the same meaning for federal estate tax purposes as it does for Iowa inheritance tax purposes. As a result, the federal revenue rulings establishing the criteria for valuing closely held corporate stock are equally applicable

to inheritance tax values. Therefore, corporate stock which meets the standards for being closely held must be valued for inheritance tax purposes under the provisions of Federal Revenue Ruling 59-60, 1959-1 C.B. 237 as modified by Revenue Ruling 65-193, 1965-2 C.B. 370 and amplified by Revenue Ruling 77-287, 1977-2 C.B. 319, Revenue Ruling 80-213, 1980-2 C.B. 101, and Revenue Ruling 83-120, 1983-2 C.B. 170, which Federal Revenue Rulings are incorporated in and made a part of this subrule by reference.

(3) Fair market value of real estate contracts, notes, and mortgages. The fair market value of promissory notes, secured or unsecured, contracts for the sale of real estate, and other obligations to pay money which are included in the gross estate is presumed to be the amount of the unpaid principal plus the amount of interest, if any, accrued to the day of the decedent's death. If the asset is not reported on the return at face value plus accrued interest, the burden is on the party claiming a greater or lesser value to establish that face value plus accrued interest is not the asset's fair market value.

Factors which have a bearing on whether the fair market value of an asset is greater or less than face value include, but are not limited to, the rate of interest charged on the obligation; the length of time remaining on the obligation; the credit standing and payment history of the debtor; the value and nature of the property, if any, securing the obligation; the relationship of the debtor to the decedent; and whether the obligation is to be offset against the debtor's share of the estate. See Iowa Code section 633.471 and *Welp v. Department of Revenue*, 333 N.W.2d 481 (Iowa 1983). This subrule can be illustrated by the following:

EXAMPLE 1. The decedent at the time of death owned a seller's interest in an installment sale contract for the sale of a 160-acre farm. The contract contained a forfeiture provision in the event the buyer failed to make the payments and further provided that the purchase price was to be paid in 20 equal annual principal payments plus interest at 7 percent per year on the unpaid principal balance. At the time of the decedent's death, the contract of sale had ten years yet to run and the current federal land bank interest rate for farm land loans was 12 percent. Assuming in this example that other valuation factors are not relevant, the fair market value of the contract is the face amount of the contract, plus interest, discounted to reflect a 12 percent interest return on the outstanding principal balance. A prudent investor would not invest at a lower rate of interest when a comparable investment with equal security would earn 12 percent interest.

EXAMPLE 2. A tenant of the decedent owed the decedent $5,000, which was evidenced by a promissory note, payable on demand, drawing 6 percent interest, and which was executed in 1992, a year prior to the decedent's death. Assuming no other valuation factors are relevant, the fair market value of the $5,000 promissory note is its face value, plus accrued interest. The less than market interest rate on the note does not affect its fair market value because the note is due on demand and, as a consequence, there is no loss of a higher rate of interest which would be the case if the note specified a future payment date.

EXAMPLE 3. Decedent A died intestate July 1, 1993, survived by two nephews, B and C. The estate consisted, after debts and charges, of $300,000 in cash and U.S. Government bonds and a noninterest bearing promissory note for $10,000 executed by nephew B in 1975 for money borrowed for his college education. No payments were ever made on the note. The note is outlawed by the statute of limitations and would be worthless if anyone other than nephew B or C had executed the note. However, since nephew B inherits one-half of A's estate, and is required under the law of setoff and retainer to pay the note before he can participate in the estate, the fair market value of the note in this particular fact situation is $10,000 because it is collectible in full. Each nephew's share of the estate is $155,000. Nephew C receives $155,000 in cash and nephew B receives $145,000 in cash plus his canceled note for $10,000. In this example, the statutory right of setoff and retainer supersedes other factors which are relevant in determining the fair market value of the asset. See Iowa Code section 633.471; *In re Estate of Farris*, 234 Iowa 960, 14 N.W.2d 889 (1944); *Indiana Department of Revenue v. Estate of Cohen*, 436 N.E.2d 832 (Ind. App. 1982); *Gearhart's Ex'r and Ex'x v. Howard*, 302 Ky. 709, 196 S.W.2d 113 (1946).

(4) Fair market value of a sole proprietorship or partnership interest. The fair market value of the decedent's interest in a business, whether a partnership or a proprietorship, is the net amount a willing buyer would pay for the interest to a willing seller, neither being under any compulsion to buy or to sell

and both having reasonable knowledge of the relevant facts. Relevant factors in determining net value include but are not limited to the following: a fair appraisal as of the applicable valuation date of all of the assets of the business, tangible and intangible, including goodwill; the demonstrated earning capacity of the business; and the other factors in rule 701—89.8(422), to the extent they are applicable, that must be considered in valuing closely held corporate stock.

(5) Fair market value of choses in action. The fair market value of the decedent's interest in a right to sue for a debt or a sum of money often cannot be determined with certainty at the time of the decedent's death. The value of this right is dependent on many factors which include, but are not limited to, the following: the strength and credibility of the decedent's evidence; the statutory and case law supporting the decedent's claim or position; the ability of the opposing party to pay a judgment; the extent, if applicable, of the decedent's contributory negligence; and the other normal hazards of litigation. However, this lack of certainty does not mean the right to sue has no value at the time of the decedent's death. Evidence of what was actually received for this right by the decedent's estate or its beneficiary is evidence of the fair market value of the right at death.

This subrule can be illustrated by the following example:

The decedent died in a fire of uncertain origin that destroyed his dwelling. Due to the circumstances surrounding the fire, the estate's right of recovery from the fire insurance carrier was speculative and, therefore, the value of this right at death was unknown. After the estate was closed, the beneficiary of the estate settled the fire insurance claim for $15,000. The amount received in settlement of the claim can be considered as evidence of the fair market value of the right of action at death. *Bair v. Randall*, 258 N.W.2d 333 (Iowa 1977). In addition, interest on the unpaid tax begins and continues to accrue from the date of the decedent's death.

(6) Wrongful death proceeds are not included in the gross estate. *Estate of Dieleman v. Department of Rev.*, 222 N.W.2d 459 (Iowa 1974).

e. By agreement between the department, the estate and its beneficiaries. Iowa Code section 450.37 provides that the market value in the ordinary course of trade is to be determined by agreement between the estate and its beneficiaries and the department. The term "agreement" when used with reference to the value of an asset, whether it is real or personal property, has the same meaning as the term is used in the law of contracts. The agreement between the department, the estate and its beneficiaries may be contained in a single written instrument, or it may be made by an offer submitted by the estate and its beneficiaries and its acceptance by the department. The agreement establishing values for computing the tax may specify that the values as finally determined for federal estate tax purposes on all or a portion of the assets will be the values used in computing the tax.

(1) Offer by the estate and the beneficiaries. It is the duty of the taxpayer to list on the inheritance tax return the values of the assets in the gross estate which the estate and those beneficially entitled to the decedent's property are willing to offer as the values for computing the taxable shares in the estate. The value of the assets listed on the return will constitute an offer for the department to accept or reject. Counteroffers may be made in the event an offer is rejected. This rule applies equally to real and personal property.

(2) Acceptance of values by the department. The values offered on the inheritance tax return by the estate and its beneficiaries are accepted by the department when:

1. The department has accepted the offered values in writing, or

2. A clearance certifying full payment of the tax due or a clearance certifying no tax due is issued by the department, or

3. The department does not request an appraisal within 30 days after the return has been filed in the case of the value of real estate. Notice of appraisal must be served by certified mail and the notice is deemed completed when the notice is deposited in the mail and postmarked for delivery. However, see 86.9(2)*"e"*(3) for the rule governing values listed as "unknown" or "undetermined." See Iowa Code sections 622.105 and 622.106 for the law determining the filing date of a tax return that is mailed.

(3) Values listed on the return as "undetermined" or "unknown." If at the time the inheritance tax return is filed the information necessary to determine the value of an asset cannot be presently ascertained, the taxpayer may list the value of that asset as "unknown" or "undetermined." The return

must contain a statement signed by the taxpayer on behalf of the estate and the beneficiaries with an interest in the property granting the department an extension of time for requesting an appraisal until 30 days after an amended return is filed listing a value for the real estate. Failure to grant an extension of time will subject the real estate to an immediate request for an appraisal. The amended return shall be accompanied with sufficient facts and other information necessary to substantiate the value offered. An agreement concerning the value of an asset presupposes that both the department, the beneficiaries and the estate have knowledge of the relevant facts necessary to determine value. There can be no meaningful agreement or appraisal until the relevant facts relating to value are known. See *Bair v. Randall*, 258 N.W.2d 333 (Iowa 1977), regarding the criteria that may be used to determine the value of an asset which was unknown at the time of the decedent's death.

f. Values established—no agreement.

(1) Real estate. If the department, the estate and the persons succeeding to the decedent's property have not reached an agreement as to the value of real estate under 86.9(2)*"e,"* the market value for inheritance tax purposes will be established by the appraisal proceedings specified in Iowa Code sections 450.27 to 450.36. For the purposes of appraisal, "real estate or real property" means the land and appurtenances, including structures affixed thereto. Use of the inheritance tax appraisers to determine value for other purposes such as, but not limited to, determining the share of the surviving spouse in the estate or for determining the fair market value of real estate for the purposes of sale, is not controlling in determining values for inheritance tax purposes. *In re Estate of Giffen*, 166 N.W.2d 800 (Iowa 1969); *In re Estate of Lorimor*, 216 N.W.2d 349 (Iowa 1974). Appraisals of real estate must be made in fee simple including land, all appurtenances and structures affixed to the real estate. Discounts in the value of real estate are not to be considered in the valuation of real property for the purposes of an appraisal. Such discounts in valuation are to be resolved by mutual agreement through informal procedures between the personal representative of the estate and the department. If an agreement between the personal representative of the estate and the department cannot be obtained, then the valuation placed on the property by the department may be appealed by the personal representative of the estate pursuant to the procedures set forth in rule 701—86.4(450). If either the department or the estate does not agree with the results of an appraisal that is conducted pursuant to Iowa Code sections 450.27 through 450.36, either the department or the estate may file an objection to the appraisal pursuant to Iowa Code section 450.31. See 701—subrule 86.9(2) for additional factors to assist in the determination of fair market value of real property.

(2) Personal property. Effective for estates of decedents dying on or after July 1, 1983. If an agreement is not reached on the value of personal property under 86.9(2)*"e,"* the estate or any person beneficially receiving the personal property may appeal to the director under Iowa Code section 450.94, subsection 3, for a resolution of the valuation dispute, with the right of judicial review of the director's decision under Iowa Code chapter 17A.

g. Amending returns to change values.

(1) Amendment permitted or required. Unless value has been established by the appraisal or administrative proceedings, the inheritance tax return may be amended by the estate to change the value of an asset listed on the return as long as the amendment is filed before an agreement is made between the estate and the department as to the asset's value. The return must be amended to list the value of an asset omitted from the original return or to assign a value for an item listed on the original return as "unknown" or "undetermined."

If the facts and circumstances surrounding the value agreement would justify a reformation or rescission of the agreement under the law of contracts, the return may be amended by the estate, and must be amended at the department's request, to change the value of the item to its correct fair market value or its special use value as the case may be.

(2) Amendment not permitted. A return cannot be amended:

1. To change the agreed value of an asset, if the facts and circumstances surrounding the agreement would not justify a reformation or rescission of the agreement,

2. To change a real estate value that has been established by the appraisal proceedings under Iowa Code sections 450.31 to 450.33, *Insel v. Wright County*, 208 Iowa 295, 225 N.W. 378 (1929), or

3. To change the value of an item of personal property that has been established by the department's administrative procedure under 701—Chapter 7, or, if an appeal is taken from the director's decision, by judicial review under Iowa Code chapter 17A. Provided, in no event may the return be amended to lower the value of an asset that would result in a refund of tax more than three years after the tax became due or one year after the tax was paid, whichever time is the later. Iowa Code section 450.94, *Welp v. Department of Revenue*, 333 N.W.2d 481 (Iowa 1983).

This rule is intended to implement Iowa Code sections 450.27 to 450.37, 450.44 to 450.49, and 633.800 to 633.811.

701—86.10(450) Alternate valuation date.

86.10(1) *When available.* The alternate valuation date allowed by 26 U.S.C. Section 2032 is available for estates of decedents dying on or after July 1, 1983, on the same terms and conditions which govern the alternate valuation date for federal estate tax purposes. Effective for estates of decedents dying after July 18, 1984, the alternate valuation date cannot be elected unless the value of the gross estate for federal estate tax purposes is reduced and the amount of federal estate tax owing, after all credits have been deducted, has also been reduced. See 26 U.S.C. Section 2032(c) enacted by Public Law 98-369 Section 1023(a). In general, the alternate valuation date is six months after the date of the decedent's death. If property is sold within the six-month period, the date of sale is the alternate date for valuing the property sold. See federal regulation Section 20.2032-1, as amended December 28, 1972, for the rules governing the valuation of property in the gross estate at its alternate valuation date for federal estate tax purposes. If the election is made, all of the property included in the gross estate and not just a portion of the property, must be valued at the alternate valuation date. The estate may elect both the alternate valuation date and the special use value under Iowa Code chapter 450B, if the estate is otherwise qualified. See Federal Revenue Ruling 83-31(1983). It is a precondition for valuing the property at its alternate value for Iowa inheritance tax purposes that the property has been valued at the alternate value for federal estate tax purposes. However, even if the property in the gross estate is valued at the alternate valuation date for federal estate tax purposes, the estate has the option either to elect or not to elect the alternate valuation date for Iowa inheritance tax purposes. If the alternate valuation date is elected, the value established for federal estate tax purposes shall also be the alternate value for inheritance tax purposes. The election is an affirmative act and for estates of decedents dying prior to July 19, 1984, it must be made on a timely filed inheritance tax return, taking into consideration any extensions of time granted to file the return. Effective for estates of decedents dying after July 18, 1984, the election may be made on the first return filed for the estate, regardless of whether the return is delinquent, providing the return is filed no more than one year after the due date, taking into consideration any extensions of time granted to file the return and pay the tax due. See 26 U.S.C. 2032(d) as amended by Public Law 98-369 Section 1024(a). Failure to indicate on the inheritance tax return whether the alternate valuation date is elected shall be construed as a decision not to elect the alternate valuation date.

86.10(2) *When not available.*

a. The alternate valuation date provided for in 26 U.S.C. Section 2032 cannot be elected by the estate if the tax on a future property interest has been deferred under Iowa Code sections 450.44 to 450.49. The tax on a future property interest must be computed on the fair market value of the future property interest at the time the tax is paid. *In re Estate of Wickham,* 241 Iowa 198, 40 N.W. 2d 469 (1950).

b. Real estate which is subject to an additional inheritance tax imposed by Iowa Code section 450B.3 due to the early disposition or cessation of the qualified use cannot be valued at the alternate valuation date for purposes of the recapture tax, unless the alternate valuation date was originally elected on the return for the decedent's estate.

c. The alternate valuation date cannot be elected if the size of the gross estate for federal estate tax purposes, based on the fair market value of the assets at the time of death, is less than the minimum filing

requirements under current federal authority. The fact that the gross estate for inheritance tax purposes is less than the minimum federal estate tax filing requirement is not relevant.

This rule is intended to implement Iowa Code sections 422.3 and 450.37.

701—86.11(450) Valuation—special problem areas.

86.11(1) *Valuation of life estate and remainder interests.* In general. Life or term estates and remainders in property cannot be valued separately for inheritance tax purposes without reference to the value of the property in which the life or term estate and remainder exists. The first valuation step is to determine the value of the property as a whole. This rule applies equally to fair market value in the ordinary course of trade, whether it be valued at death or on the alternate valuation date six months after death, or at its special use value under Iowa Code chapter 450B. The second step is to apply the life estate-remainder or term tables in rule 701—86.7(450) to the whole value of the property in which the life estate-remainder or term exists. Iowa Code section 450.51 requires that value of annuities, life or term, deferred or future estates in property be computed on the basis that the use of the property is worth a return of 4 percent per year. The life estate-remainder tables in rule 701—86.7(450) make no distinction between the life expectancy of males and females. See *City of Los Angeles v. Manhart,* 435 U.S. 702, 98 S.Ct. 1370, 55 L.Ed. 657 (1978) and *Arizona Governing Committee for Tax Deferred Annuity and Deferred Compensation Plans v. Norris,* 51 U.S. Law Week 5243, 77 L.Ed.2d 1238 (1983) for the requirement that retirement annuities must not discriminate on the basis of sex. However, the actual life expectancy of the particular person receiving the life estate is not relevant in determining the value of the life estate for inheritance tax purposes. *In re Estate of Evans,* 255 N.W.2d 99 (Iowa 1977), appeal dismissed, 434 U.S. 805, 98 S.Ct. 34, 54 L.Ed.2d 62.

86.11(2) *Single life estate and remainder.* The value of a single life estate and remainder in property is computed by first determining the value of the property as a whole. The life estate is then computed by multiplying the value of the property as a whole by the life estate factor in rule 86.7(450) for the age of the life tenant. The value of property remaining after the value of the life estate is subtracted is the value of the remainder interest in the property.

The computation of the value of a single life estate and remainder in property is illustrated by the following:

EXAMPLE: Decedent A, by will, devised to surviving spouse B, aged 68, a life estate in a 160-acre farm, with the remainder at B's death to niece C. Special use value and the alternate value were not elected. The 160-acre farm at the time of the decedent's death had a fair market value of $2,000 per acre, or $320,000.

COMPUTATION OF B's LIFE ESTATE: The life estate factor for a life tenant aged 68 under 701—86.7(450) is .37936; that is, the use of the $320,000 for life at the statutory rate of return of 4 percent is worth 37.936 percent of the value of the farm. Niece C's remainder factor is .62064. The life estate-remainder factors when combined equal 100 percent of the value of the property. It is the age of the life tenant which governs the value of the remainder. The age of the person receiving the remainder is not relevant.

Value of B's Life Estate	$320,000 × .37936 = $121,395.20
Value of C's Remainder	$320,000 × .62064 = $198,604.80
Total Value	$320,000.00

86.11(3) *Joint and succeeding life estates.* If property includable in the gross estate is subject to succeeding or joint life estates, the following general rules shall govern their valuation:

a. There can be no greater value assigned to all of the life estate interests than the value of the life estate of the youngest life tenant. The value of the life estate of the youngest life tenant fixes the value of the remainder interest in the property.

b. If two or more persons share in a life estate, the life tenants are presumed to share equally in the life estate during the life of the older life tenant, unless the will or trust instrument specifically directs that the income or use may be allocated otherwise.

c. The age of a life tenant alone determines the value of that life tenant's interest in the property. The life tenant's state of health is not relevant to valuation. *In re Estate of Evans,* 225 N.W.2d 99 (Iowa 1977), appeal dismissed, 434 U.S. 805, 98 S.Ct. 34, 54 L.Ed.62. As a result, if a succeeding life tenant is older than the preceding life tenant, the value of the succeeding life estate is zero. These general rules can be illustrated by the following examples:

EXAMPLE 1. Decedent A, by will, devised a 160-acre farm to surviving spouse B, aged 68, for life, and upon B's death, to daughter C, aged 45, for life, and the remainder upon C's death to nephews, D and E, in equal shares. The 160-acre farm had a fair market value at A's death of $320,000. Neither the alternate valuation date nor special use value was elected.

COMPUTATION OF THE SUCCEEDING LIFE ESTATES AND REMAINDER

1. Value of B's Life Estate:		
Life estate factor for age 68 is .37936		
$320,000 × .37936 =		$121,395.20
2. Value of C's Succeeding Life Estate		
Life estate factor for age 45 is .67131		
$320,000 × .67131 =	$214,819.20	
Less: B's life estate	$ 121,395.20	
Value of C's life estate		$ 93,424.00
3. Value of D's ½ remainder		
Remainder factor for a life tenant aged 45 is .32869		
as ½ of $320,000 × .32869 =		$ 52,590.40
4. Value of E's ½ remainder		
½ of $320,000 × .32869		$ 52,590.40
Total Value — life estates and remainders		$320,000.00

NOTE: In this example, the value of C's succeeding life estate is reduced by the value of B's preceding life estate because C does not have the use of the farm during B's lifetime. The value of the remainder to D and E is fixed by the age of C, the succeeding life tenant.

EXAMPLE 2: Joint and survivorship life estates and remainder. In this example, the estate elected both the alternate valuation date and special use value. This is permitted by Federal Revenue Ruling 83-31 (1983) if the gross estate and the real estate are otherwise qualified.

Decedent A, a widow, by will devised her 240-acre Iowa farm to her nephew, B, aged 52, and the nephew's wife, C, aged 48, for their joint lives and for the life of the survivor, with the remainder to D and E in equal shares. The farm had a fair market value at death of $2,200 per acre, or $528,000; the alternate value of the farm six months after death was $2,100 per acre, or $504,000. Its special use value is $1,000 per acre or $240,000. The life estates and the remainder are computed on the basis of the special use value of $240,000.

COMPUTATION OF JOINT LIFE ESTATE — REMAINDER VALUES

1. B's share of joint life estate.		
$240,000 × .59399 (life estate factor, age 52) =	$142,557.60	
½ as B's share =		$ 71,278.80
2. C's share of joint life estate.		
$240,000 × .63966 (life estate factor, age 48) =	$153,518.40	
Less: ½ value of life estate for B's life	$ 71,278.80	$ 82,239.60

3. Value of the remainder.

The value of the remainder is computed by using the remainder factor at the age of the youngest life tenant. In this example, it is .36034, based on C's age of 48.

D's share of the remainder.	
½ $240,000 × .36034 =	$ 43,240.80
E's share of the remainder.	
Same as D's	$ 43,240.80
Total value of joint life estates and the remainder	$240,000.00

NOTE: In this example, B and C share equally in the life use of the farm during the life of B, who is the eldest. As a result, each life tenant's share during B's life is worth $71,278.80. Since C is younger than B, the difference between the value of the life estates for B and C is set off to C alone. The age of the youngest life tenant (C in this example) fixes the value of the remainder interest in the farm.

86.11(4) *Fixed sum annuity for life or for a term of years.* The value of an annuity for a fixed sum of money, either for the life of the annuitant or for a specific period of time, shall be computed by determining the present value of the future annuity payments using the 4 percent annuity tables in rule 86.7(450). A fixed sum annuity, either for life or for a term of years, is to be distinguished from a life estate and remainder in property. A life estate in property is the use of property and the present value of the life use cannot exceed the value of the property in which the life estate-remainder exists, regardless of the rate of return used to determine the life estate factor. A fixed sum annuity on the other hand is different. The amount of the annuity does not necessarily bear any relationship to the earning capacity or value of the property which funds the annuity. The fixed sum annuity may be for an amount larger than the 4 percent used to compute a life estate. As a result, the present value of the fixed sum annuity, computed at the statutory rate of 4 percent per year, may exceed the value of the property which funds the fixed annuity. In this case, the present value of the future annuity payments cannot exceed the value of the property which funds the annuity. The remainder in this situation has no value for inheritance tax purposes.

This subrule is illustrated by the following examples:

EXAMPLE 1. Decedent A devises a 240-acre farm to daughter B, with the provision that B pay the sum $5,000 per year to C for life. The farm is subject to a lien as security for the payment of the annuity. C, the annuitant, is 54 years old. The fair market value of the farm at A's death is $2,000 per acre, or $480,000. Neither special use value nor the alternate valuation date was elected.

COMPUTATION OF THE VALUE OF THE $5,000 ANNUITY AND THE REMAINDER REVERSION TO B. Under rule 86.7(450) the 4 percent annuity factor for life at age 54 is 14.245 for each dollar of the annuity received. Therefore, C's life annuity is computed as follows:

C's Annuity		
$5,000 × 14.245 =		$ 71,225
B's Reversionary — Remainder Interest		
Value of farm	$480,000	
Less: C's annuity	$ 71,225	$408,775
Total annuity and reversion — remainder		$480,000

NOTE: In this example, the $5,000 annuity is worth less than a life estate in the farm. A life estate would be worth $273,499.20 because the use of $480,000 at 4 percent per year would return $19,200 per year, which is much greater than the $5,000 annuity.

EXAMPLE 2: Decedent A, by will, directed that the sum of $100,000 be set aside from the residuary estate to be held in trust to pay $500 per month to B for life and upon B's death the remaining principal and income, if any, is to be paid to C and D in equal shares. B, the annuitant, was 35 years old at the time of A's death.

Under rule 701—86.7(450), the annuity factor for a person 35 years of age is 19.048 for each dollar of the annuity. The annuity factor is multiplied by the annual amount of the annuity, which in this case is $6,000 per year.

COMPUTATION OF THE PRESENT VALUE OF B's $6,000 ANNUITY

$500.00 × 12 = $6,000 × 19.048 = $114,288, which exceeds the value of the property funding the annuity. As a result, the value for inheritance tax purposes is $100,000, the maximum amount allowed by subrule 86.11(4). The remainder to C and D has no value for inheritance tax purposes.

86.11(5) *Valuation of remainder interests.* Iowa Code section 450.51 and rule 701—86.7(450) require the value of a remainder interest in property to be computed by subtracting the present value of the preceding life or term estate from the total value of the property in which the remainder exists. Since age or time is the controlling factor in valuing life or term estates in property, the time when the preceding life or term estate is valued is crucial for determining the value of the remainder interests in the property. Iowa Code sections 450.6, 450.44 and 450.52 provide three alternative dates for valuing a remainder, or other property interest in future possession or enjoyment, for inheritance tax purposes. Each of the three dates requires valuing the preceding life or term estate on the date selected, thus in effect, valuing the remainder interest at the same time. The value of the remainder interest is based on the value of the property on the date elected for payment. *In re Estate of Wickham*, 241 Iowa 198, 40 N.W.2d 469 (1950). The remainder or term factor in rule 86.7(450) which is based on the age of the life tenant, or the number of years remaining in the term on the date of payment, is then applied to the value of the property to determine the value of the remainder interest. *In re Estate of Millard,* 251 Iowa 1282, 105 N.W. 2d 95 (1960). Therefore, the remainder, or other future property interest, shall be valued by the following general rules.

a. If the tax on a remainder or other future property interest is paid within 9 months after the decedent's death (12 months for estates of decedents dying prior to July 1, 1981), the tax is to be based on the value of the property at the time of the decedent's death (whether it is fair market value or special use value) or the alternate value, 6 months after death, if elected. The age of the life tenant at the time of the decedent's death (the youngest life tenant in case of succeeding or joint life estates), or the term of years specified in the will or trust instrument, must be used to determine the value of the life estate or term estate in computing the tax on the remainder or other future property interests.

b. If the tax is paid after nine months from the date of the decedent's death (one year for estates of decedents dying prior to July 1, 1981), but before the termination of the previous life or term estate, the tax on the remainder or other future property interest shall be computed on the fair market value of the property at the time of payment using the life estate or term factor based on the life tenant's age or term of years remaining at the time the tax is paid. Neither the alternate value nor special use value can be used to value the property after nine months from the date of the decedent's death.

c. If the tax on the remainder or other future property interest is not paid under paragraphs *"a"* and *"b,"* the tax must be paid within nine months (one year for future property interests created prior to July 1, 1981) after the termination of the prior estate. In this case, the tax is based on the fair market value of the property and the life estate remainder or term factor corresponding with the time the prior estate is terminated. If the prior estate is terminated due to the death of the life tenant, or due to the expiration of the term of years, the remainder factor is 100 percent of the value of the property. If the prior estate terminates during the life of the life tenant or during the term of years, the tax is computed in the same manner as provided in paragraph *"b."* If the tax is not paid within nine months (one year for future property interests created prior to July 1, 1981) after the termination of the prior estate, the tax owing is delinquent and is subject to penalty and interest as provided by law. For information regarding interest rate, see 701—Chapter 10. However, in this case the value of the remainder interest is not modified to reflect any change in the fair market value of the property or the life or term estate factor that may occur due to the lapse of time between the due date of the tax and the date the tax is paid.

d. Iowa Code section 450.52 provides that the tax may be paid at any time on the present worth of the future property interest. The term "present worth" means the value of the future property interest at the time the tax is paid. Therefore, if the tax on the remainder or other future property interest is not paid within nine months after the decedent's death (one year for future property interests created prior to July

1, 1981), the estate or the beneficiary receiving the future interest cannot pay the tax on a delinquent basis using a value and a life estate or term factor which does not reflect the present worth of the future interest at the time of payment. In this situation, the tax must be computed under paragraph *"b"* or *"c"* of this subrule, whichever applies. In this respect, failure to pay the tax within nine months after the decedent's death (one year for future property interests created prior to July 1, 1981) operates as a deferral of the tax on the future property interest. *In re Estate of Dwight E. Clapp,* Probate No. 7251, Clay County Iowa District Court, July 2, 1980.

e. If an alternative valuation date is chosen, a liability must be currently owed by the estate to be deductible.

f. Tax rates in effect at the date of the decedent's death are the rates applicable for computation of the tax owed. *In re Estate of Wickham*, 241 Iowa 198, 40 N.W.2d 469 (1950).

These rules can be illustrated by the following examples:

For an example of computing remainder interests, see Examples 1 and 2 in 701—subrule 86.11(3).

EXAMPLE 1: Decedent A died July 1, 1993, and, by will, devised all of her personal property to her surviving spouse, B, and her 240-acre Iowa farm to B for his life with the remainder at B's death to two nephews, C and D, in equal shares. The surviving spouse, B, was 74 years of age when A died. The fair market value of the 240-acre farm was $2,000 per acre, or $480,000 on the date of A's death. Neither the alternate valuation date nor special use value was elected by the estate. On March 15, 1994, the tax on B's life estate was paid. The tax on the remainder to C and D was therefore deferred, to be paid no later than nine months after the death of B, the life tenant. However, on October 15, 1995, due to adverse economic circumstances, B, C, and D voluntarily sold the 240-acre farm at public auction to an unrelated person for $2,100 per acre, or $504,000. B's life estate was not preserved in the sale proceeds. The tax on the remainder in this fact situation must be computed under subrule 86.11(5), paragraph *"b,"* when the life estate is terminated before the life tenant's death. The sale price of the farm and the life estate remainder factor reflecting B's age on October 15, 1995, (B's age is now 76) control the value of the remainder.

COMPUTATION OF THE REMAINDER INTEREST OF C AND D

The remainder factor in rule 86.7(450) for a life tenant aged 76 is .73595.

C's ½ remainder interest	½ ($504,000 × .73595) =	$185,459.40
D's ½ remainder interest	same as C's	185,459.40
Total value of remainder		$370,918.80

NOTE: In this example, the value of C and D's remainder interest in the sale proceeds is greater than the value of the remainder at the time of A's death due to the increase in the remainder factor because of B's increased age and the increase in the fair market value of the farm. However, if B's life estate had been preserved in the sale proceeds, the tax could continue to be deferred on C and D's remainder interest. C and D cannot be required to pay the tax on their remainder until they come into possession or enjoyment of the property.

EXAMPLE 2: Decedent A at the time of her death on July 1, 1993, owned a vested remainder in a 240-acre Iowa farm, which was subject to the life use of her mother, B, who was 87 years old when A died. A's ownership of the remainder interest was not discovered until after life tenant B's death on October 15, 1995. The fair market value of the farm was $2,000 per acre or $480,000 on July 1, 1993, and $2,200 per acre or $528,000 on October 15, 1995. Neither the alternate valuation date nor special use valuation can be used in this fact situation. See rule 86.10(450) and subrule 86.8(4), paragraph *"c."* A's estate was reopened to include the omitted remainder in the 240-acre farm. An amended inheritance tax return was filed December 10, 1995, basing the tax on the fair market value and the remainder factor corresponding with the life tenant's age (87) on July 1, 1993. In this fact situation, the tax on A's remainder is not computed correctly, even if A's estate has offered to pay a penalty and interest on the tax due. The tax must be computed on the basis of a fair market value of $2,200 per acre and a remainder factor of 100 percent of the value of the farm. No penalty or interest would be assessed if the correct tax

is paid prior to July 15, 1996, which is nine months after the life tenant's death. The life tenant's age at death is not relevant.

86.11(6) *Valuation of contingent property interests.* Contingent remainders, succeeding life estates and other contingent property interests must be valued as if no contingency exists. Factors to be considered to determine if a contingency interest exists include, but are not limited to, the interest is generally a future interest, it is not a vested interest, and vesting of the interest depends upon the occurrence of a specific event or condition being met. As a result, 701—subrule 86.11(5) applies equally to the valuation of vested and contingent property interests. The tax on a contingent property interest may be deferred until such time as it can be determined who will come into possession or enjoyment of the property. By deferring the tax under Iowa Code sections 450.44 to 450.49, a person does not have to speculate as to who will be the probable owner of the contingent interest. As a result, no one is required to pay tax on a property interest to which a vested right has not been received. Therefore, if a person exercises the right to pay the tax during the period of the contingency, that person cannot obtain a tax advantage by asserting that the value should be reduced due to a contingency, when the person would not be entitled to a reduction in value if the tax had been deferred until the ownership is determined.

This rule is illustrated by the following example.

COMPREHENSIVE EXAMPLE: Decedent A, by will, devised a 240-acre Iowa farm to B for life and upon B's death, then to C for life and the remainder after C's death to D and E in equal shares. In this example, C's succeeding life estate is contingent upon surviving B, the first life tenant. If C elects to pay the tax on the succeeding life estate within nine months after A's death, the tax is computed according to Example 1 in subrule 86.11(3) with no discount for the contingency that C may not survive B. However, C may defer the tax to be paid no later than nine months after B's death. In this case, if C does not survive B, the succeeding life estate lapses, and D and E who own the remainder will come into possession or enjoyment of the 240-acre farm. No tax will be owing on the succeeding life estate because C receives nothing. D and E will owe tax on the remainder within nine months after the death of B, if the tax was not previously paid.

For another example of computing a contingent remainder interest see *In re Estate of Schnepp*, 258 Iowa 33, 138 N.W.2d 886 (1965).

86.11(7) *Valuation of growing crops owned by the decedent.* Valuation of growing crops owned by the decedent is determined by using a proration formula. Based on the formula, the cash value of the actual crop realized in the fall of the year is prorated by attributing a portion of the value to the period before death and a portion after death. The portion attributed to the period before death is the value for Iowa inheritance tax purposes. The numerator of the ratio expresses the number of days the decedent lived during the growing season. In Iowa, the growing season for corn and beans is generally considered to be from May 15 through October 15, or 153 days. This 153-day period is the denominator of the ratio. This ratio should then be multiplied by the number of bushels realized in the fall, and then multiplied by the local elevator price at the time of maturity. However, if the estate sells the crop within a reasonable time after harvest, and the sale is an "arm's-length transaction," then the sale price of the crop can be used as a fair market value basis.

EXAMPLE: The decedent grew crops consisting of corn and beans. The decedent died August 15. The decedent lived 92 days of the growing season. In the fall of the year, 2,000 bushels of corn were harvested by the estate and sold to the local elevator for $3.10 per bushel. The value of the crop for the purpose of Iowa inheritance tax purposes is calculated as follows:

$$\frac{92}{153} \times \begin{matrix}2{,}000\\ \text{bushels}\end{matrix} \times \begin{matrix}\$3.10 \text{ per}\\ \text{bushel}\end{matrix} = \$3{,}728.10$$

86.11(8) *Valuation of cash rent farm leases.* If the decedent at the time of death owns farm property that was subject to lease, or if the decedent rents such property, the value of the cash rent farm for inheritance tax purposes must be determined. The formula to be used is the total cash rent for the entire rental period prorated over the entire year. The proration percentage is the number of days the decedent lived during the rental period, divided by 365 days. This percentage shall then be applied to the total cash

rent for the entire year. Deductions from the resulting sum are allowed for rent payments made prior to the death of the decedent. If the deduction results in a negative amount, no refund or credit is allowed.

This valuation formula is to be utilized whether the decedent is the lessor or lessee of such property.

This rule is intended to implement Iowa Code sections 450.44 to 450.49, 450.51 and 450.52.

701—86.12(450) The inheritance tax clearance.

86.12(1) *In general.* The inheritance tax clearance is a written certificate of the department documenting the satisfaction of the inheritance tax obligation of the persons succeeding to the property included in the gross estate and the personal representative of the estate, and also the obligation of the qualified heir, in case special use valuation is elected under Iowa Code chapter 450B. The clearance is either in the form of a full payment tax receipt or a statement that no tax is due on the shares of the estate. Even though the department of revenue has issued an inheritance tax clearance, the tax may be subject to change as a result of any federal estate tax changes affecting the Iowa inheritance tax. Absent an agreement to the contrary, the six-month extension of the statute of limitations for assessing Iowa inheritance tax based on federal audit adjustments is limited to federal audit adjustments that directly affect Iowa inheritance tax and involve Iowa inheritance tax law that incorporates Internal Revenue Code provisions—see Iowa Code section 450.94(5) and *Kelly-Springfield Tire Co. v. Iowa State Board of Tax Review,* 414 N.W.2d 113 (Iowa 1987).

86.12(2) *Limitations on the clearance.* Limitations on the inheritance clearance include, but are not limited to:

a. If special use valuation has been elected under Iowa Code chapter 450B, a clearance certifying all inheritance tax has been paid in full, or that no inheritance tax is due, does not extend to any additional inheritance tax that may be imposed under Iowa Code section 450B.3 by reason of the early disposition or early cessation of the qualified use of the real estate specially valued. Provided, this limitation shall be null and void if:

(1) The real estate specially valued remains in qualified use for the ten-year period after the decedent's death, or

(2) There is an early disposition or early cessation of the qualified use and any additional inheritance tax imposed by Iowa Code section 450B.3 is paid in full.

b. The clearance does not extend to property that is not reported on the return.

c. The clearance does not extend to a fraudulently filed return or a return which misrepresents a material fact.

d. The clearance does not release an underlying tax obligation that remains unpaid, even though a clearance may release the liens imposed by Iowa Code sections 450.7 and 450B.6.

86.12(3) *The tax paid in full clearance.* Effective for estates of decedents dying on or after July 1, 1983, the distinction between full payment and partial payment clearances is abolished. For estates of decedents dying on or after July 1, 1983, in which a tax is due, only full payment clearances will be issued. The full payment clearance will be issued only after all the tax, penalty and interest have been paid in full. Provided, if the tax has been paid in full on some, but not all of the shares in the estate, the department will, upon request, issue a full payment clearance limited to those shares on which the tax has been paid in full. The inheritance tax is a separate tax on each share of the estate and not one tax on the estate itself. *In re Estate of Stone,* 132 Iowa 136, 109 N.W. 455 (1906). However, see subrule 86.12(2), paragraph *"a,"* for the limitation on clearances if the estate elected the special use valuation under Iowa Code chapter 450B.

86.12(4) *The no tax due clearance.* If no tax is found to be due on any of the shares of the estate, the department will issue a clearance certifying that no tax is due, subject to the limitations in subrule 86.12(2).

86.12(5) *Clearance releases the lien.*

a. *In general.* Two inheritance tax liens have been created by statute to secure the payment of an inheritance tax. The lien created by Iowa Code section 450.7 secures the payment of the tax imposed by Iowa Code section 450.3, regardless of whether the tax is based on market value in the ordinary course of trade, the alternate value or special use value. Iowa Code section 450B.6 creates a second lien to secure

the additional inheritance tax that may be due by reason of the early disposition or early cessation of the qualified use of special use valuation property.

b. The section 450.7 lien. Effective May 20, 1999, a ten-year statutory lien for inheritance tax on all estates is imposed regardless of whether the decedent died prior to or subsequent to July 1, 1995. A lien is imposed for the inheritance tax on all the property of the estate or owned by the decedent for a period of ten years from the date of death of the decedent, unless a remainder or deferred interest is at issue, then the statutory period for the lien may be extended beyond the ten-year limitation to accommodate the term of the interest. For exceptions and additional information, see Iowa Code section 450.7. A tax clearance releases the lien imposed by Iowa Code section 450.7 on all of the property in the gross estate that is reported on the return.

Effective for estates of decedents dying on or after July 1, 1984, if a tax, or additional tax, is found to be due after the issuance of an inheritance tax clearance, the lien under Iowa Code section 450.7 does not have priority against subsequent mortgages, purchases or judgment creditors, unless the department gives notice of the lien by recording the notice in the office of the recorder of the county where the estate is probated, or in the county where the property is located, if the estate has not been administered. As a result, if the department has issued an inheritance tax clearance, an examiner of real estate or personal property titles can rely on this clearance as a release of the inheritance tax lien even though additional tax may be due. This subrule only pertains to the security for the tax under the lien provisions of Iowa Code section 450.7. Other provisions for security for payment of the tax such as judgment liens, mortgages, bonds and distress warrants, are not affected by this subrule. See Iowa Code section 450B.6 and subrule 86.8(15) for the lien for additional tax on property which has been valued at its special use value.

This subrule can be illustrated by the following example:

EXAMPLE: Decedent A died August 15, 1994, a resident of Iowa. By will A devised a 160-acre farm to nephew B and all personal property to niece C. The net estate consisted of the farm with a fair market value of $2,000 per acre, or $320,000 and personal property worth $320,000. On May 24, 1995, the inheritance tax return was filed and tax of $88,000 ($44,000 for each beneficiary) was paid. The department issued its unqualified inheritance tax clearance on June 13, 1995. On July 5, 1995, C pledges some corporate stock inherited from A as security for a bank loan. On August 1, 1995, additional personal property was discovered worth $10,000 ($10,000 × 15% = $1,500) and an amended inheritance tax return was filed without remittance. On August 15, 1995, the department filed an inheritance tax lien for the $1,500 additional tax plus interest (no penalty was imposed because 90 percent of the tax was timely paid).

In this example, the bank's lien on the pledged corporate stock is superior to the inheritance tax lien under Iowa Code section 450.7, because at the time the stock was pledged (July 5, 1995), the department had not filed its lien for the additional tax owing. Since only C owed additional tax, B's share of the estate was not subject to the lien filed August 15, 1995.

c. The section 450B.6 lien. This lien has no application to estates of decedents dying prior to July 1, 1982. In estates of decedents dying on or after July 1, 1982, the lien only applies to the property which has been specially valued under Iowa Code chapter 450B. A clearance certifying full payment of the additional inheritance tax imposed by Iowa Code section 450B.3 releases the lien on the property which was subject to the additional tax. Since the lien imposed by Iowa Code section 450B.6 expires automatically ten years after the decedent's death on property remaining in qualified use during the ten-year period, a tax clearance is not required.

86.12(6) *Distribution of the clearance.* Effective for estates of decedents dying on or after July 1, 1983, only an original inheritance tax clearance will be issued by the department. The personal representative is required to designate on the return who is to receive the clearance. If the return fails to designate a recipient, the clearance will be sent to the clerk of the district court.

Rules 86.9(450) to 86.12(450) are intended to implement Iowa Code chapter 17A and sections 450.1 as amended by 1999 Iowa Acts, chapter 152, section 32, 450.7 as amended by 1999 Iowa Acts, chapter 151, section 45, 450.27 as amended by 1999 Iowa Acts, chapter 152, section 33, and Iowa Code sections 450.5, 450.58, 450.64, 450B.2, 450B.3, 450B.6, 633.477, and 633.479.

701—86.13(450) No lien on the surviving spouse's share of the estate. Effective for estates of decedents dying on or after January 1, 1988, no inheritance tax lien is imposed on the share of the decedent's estate passing to the surviving spouse. In addition, effective for estates of decedents dying on or after July 1, 1997, no inheritance tax lien is imposed on the share of the decedent's estate passing to the decedent's parents, grandparents, great-grandparents, and other lineal ascendants, children (including legally adopted children and biological children entitled to inherit under the laws of this state), grandchildren, great-grandchildren, and other lineal descendants and stepchildren.

This rule is intended to implement Iowa Code sections 450.7(1) and 450.12 as amended by 1997 Iowa Acts, Senate File 35.

701—86.14(450) Computation of shares. The following areas of the law should be applied when computing the shares of an estate for the purpose of Iowa inheritance tax:

86.14(1) *Right to take against the will.* In the event that a decedent dies with a will, a surviving spouse may elect to take against the will and receive a statutory share in real and personal property of the decedent as designated by statute. If a surviving spouse elects to take against the will, this election nullifies gifts to the surviving spouse set forth in the decedent's will. For details regarding this election and statutory share, see Iowa Code sections 633.236 to 633.259 and In the Matter of Campbell, 319 N.W.2d 275, 277 (Iowa 1982).

86.14(2) *Family settlements.* Beneficiaries of an estate may contract to divide real or personal property of the estate, or both, in a manner contrary to the will of the decedent. The court of competent jurisdiction may approve the settlement contract of the beneficiaries. However, the department is not a party to the contract and is not bound to compute the shares of the estate based on the settlement contract. Instead, the department must compute the shares of the estate based upon the terms of the decedent's will, unless a court of competent jurisdiction determines that the will should be set aside. See *In re Estate of Bliven*, 236 N.W.2d 366 (Iowa 1975).

86.14(3) *Order of abatement.* Shares to be received by the beneficiaries of an estate are subject to abatement for the payment of debts, charges, federal and state estate taxes in the order as provided in Iowa Code section 633.436.

86.14(4) *Contrary order of abatement.* An order of abatement contrary to that provided in Iowa Code section 633.436 is provided by statute. For instance, if a provision of a will, trust or other testamentary instrument explicitly directs an order of abatement contrary to Iowa Code section 633.436 or a court of competent jurisdiction determines order of abatement due to a devise that would result in an order of abatement contrary to Iowa Code section 633.436, then the order of abatement indicated is to be followed. For additional information regarding contrary provisions of abatement, see Iowa Code section 633.437. For details regarding marital share and contrary order of abatement see, Estate of Lois C. Olin, Docket No. 92-70-1-0437, Letter of Findings (June 1993).

86.14(5) *"Stepped-up" basis.* If a decedent's will provides that taxes are to be paid from the residue of the estate and not the respective beneficial shares, a "stepped-up" basis will be utilized when computing the shares which will result in the appropriate beneficiaries' shares to include the tax obligation that was paid as an additional inheritance. A "stepped-up" basis is based on gifts prior to the residual share.

EXAMPLE: Decedent's will gives $1,000 to a nephew and directs that the inheritance tax on this bequest be paid from the residue of the estate. The stepped-up share is computed as follows:

Tax: $1,000 x 10% = $100. Divide the tax by the difference between the tax rate and 100 percent (90 percent in this example): $100 divided by 90% = $111.11. Add the stepped-up tax of $111.11 to the original bequest of $1,000. This results in a stepped-up share of $1,111.11, which allows the nephew to keep $1,000 after the tax is paid.

86.14(6) *Antilapse provision and the exception to the antilapse statute.* Iowa Code sections 633.273 and 633.274 set forth guidance on the allocation of property in situations in which a lapse in inheritance may occur. Iowa Code section 633.273 provides that when a devisee predeceases a testator, the issue of the devisee inherits the property, per stirpes, unless from the terms of the will, the intent is clear and explicit to the contrary. However, Iowa Code section 633.274 is an exception to Iowa Code section

633.273. If the spouse of the testator predeceases the testator, the inheritance shall lapse, unless the terms of the will clearly and explicitly provide to the contrary. For details regarding the provisions, please see the cited statutes.

86.14(7) *Disclaimer.* A person who is to succeed to real or personal property may refuse to take the property by executing a binding disclaimer which relates back to the date of transfer. Unless the transferor of the property has otherwise provided, disclaimed property passes as if the disclaimant has predeceased the transferor. To be valid, a disclaimer must be in writing and state the property, interest or right being disclaimed, the extent the property, right, or interest is being disclaimed, and be signed and acknowledged by the disclaimant. The disclaimer must be received by the transferor or the transferor's fiduciary not later than nine months after the later of the date in which the property, interest or right being disclaimed was transferred or the date the disclaimant reaches 18 years of age. A disclaimer is irrevocable from the date of its receipt by the transferor or the transferor's fiduciary. For additional details regarding disclaimers, please see Iowa Code Supplement chapter 633E.

Effective for estates with decedents dying on or after July 1, 2004, disclaimers are to be filed in compliance with the Iowa uniform disclaimer Act, Iowa Code Supplement chapter 633E. This Act sets forth new requirements for valid disclaimers. Criteria will be based on the type of property or the interest being disclaimed. General criteria for disclaimers have not changed. To be valid, a disclaimer must be in writing or be stored in electronic record or other medium that is retrievable, declare the disclaimer, describe the interest or power disclaimed, be signed by the person making the disclaimer, and be filed. A partial disclaimer may be expressed as a fraction, percentage, monetary amount, term of years, limitation of a power, or any other interest in property of the estate.

A disclaimer becomes irrevocable when it is delivered, filed, or when it becomes effective, whichever occurs later. Delivery of a disclaimer may generally be made by personal delivery, first-class mail, or any other method likely to result in its receipt. However, specific interests being disclaimed require specific means of delivery. For explicit information regarding delivery of a disclaimer based on interest being disclaimed, see Iowa Code Supplement section 633E.12.

86.14(8) *Right of retainer.* If a distributee of an estate is indebted to the estate, whether the decedent dies testate or intestate, the personal representative has the right to offset the distributee's share in the estate against the amount owed to the estate by the distributee. For additional information regarding this right of offset and retainer, see Iowa Code section 633.471.

86.14(9) *Deferred life estates and remainder interest.* A deferred estate generally occurs as the result of a decedent granting a life estate in property to one person with remainder of the property to another. In such cases, the determination of the tax on the remainder interest to be received by the remainderman may be deferred until the determination of the previous life estate pursuant to Iowa Code section 450.46. Tax on a remainder interest that has been deferred is valued pursuant to Iowa Code section 450.37, with no reduction based on the previous life estate. Tax due on a deferred interest must be paid before the last day of the ninth month from the date of the death of life tenant pursuant to Iowa Code section 450.46. Penalty and interest is not imposed if the tax is paid before the last day of the ninth month from the date of the death of life tenant. If the death of the decedent occurred before July 1, 1981, the tax due on a deferred interest must be paid before the last day of the twelfth month from the date of the death of life tenant. Deferment may be elected due to the fact that the remainder interest is contingent and because the value of the remainder interest may be significantly altered from the time of the decedent's death until the death of the life tenant. A request for deferment may be made on a completed department form and the completed form, with any required documentation, may be filed with the department on or before the due date of the inheritance tax return. Failure to file a completed department form requesting a deferral of tax on the remainder interest with the inheritance tax return will allow the department to provide an automatic deferral for qualifying remainder interests.

If deferral is chosen, an inheritance tax clearance cannot be issued for the estate. Expenses cannot be used to offset the value of the deferred remainder interest. Based upon Iowa Code section 450.12, deductible expenses must be expenses paid by the estate. Expenses incurred by a deferred remainder interest would not qualify based on Iowa Code section 450.12 as deductible expenses. Pursuant to Iowa Code section 450.52, the owner of a deferred remainder interest may choose to pay the tax on the present

value of the remainder interest and have the lien on such an interest removed prior to the termination of the previous life estate. If early termination of the deferred remainder interest occurs, the value of the remainder interest will be reduced by the value of remaining previous life estate.

If the tax on an estate is deferred, a bond may have to be filed with the proper clerk of the district court. This bond must remain effective until the tax on the deferred estate is paid. Failure to maintain or properly renew the bond will result in the bond's being declared forfeited, and the amount collected. For additional details regarding obtaining a bond, see Iowa Code sections 450.49 and 450.50.

86.14(10) *Credit on prior transfers.* A credit is allowed for inheritance tax paid by certain beneficiaries that have received shares from a prior estate. The credit can be claimed only by the brother, sister, son-in-law and daughter-in-law of the decedent. The decedent in whose estate the credit is to be used must have died within two years of the death of the decedent in whose estate the tax for which the credit is requested was paid and the property inherited. The credit is subject to two limitations:

a. The maximum credit allowed cannot exceed the amount of the prior inheritance tax that was paid on the property in the prior estate. In other words, the inheritance tax the present decedent paid on the property in the prior estate must be prorated on the basis such property bears to the total property inherited in the prior estate; and

b. The amount of the credit cannot exceed the tax generated in the current estate on the property which was inherited from the earlier estate. This means that the tax in the current estate must be apportioned on the basis the prior estate property bears to the total property inherited by the beneficiary in the second estate. The credit cannot exceed this apportioned amount.

This rule is intended to implement Iowa Code chapter 450, Iowa Code Supplement chapter 633E, and 2005 Iowa Acts, chapter 38.

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CHAPTER 87
IOWA ESTATE TAX
[Prior to 12/17/86, Revenue Department[730]]

701—87.1(451) Administration.

87.1(1) *Definitions.* The following definitions cover 701—Chapter 87 and are in addition to the definitions contained in Iowa Code section 451.1.

"Administrator" means the administrator of the compliance division of the department of revenue.

"Compliance division" is the administrative unit of the department created by the director to administer the inheritance, estate, generation skipping transfer, and fiduciary income tax laws of the state.

"Department" means the Iowa department of revenue.

"Director" means the director of revenue.

"Tax" means the Iowa estate tax imposed by Iowa Code chapter 451.

"Taxpayer" means the personal representative of the decedent's estate as defined in Iowa Code subsection 633.3(29) and any other person or persons liable for the payment of the federal estate tax under 26 U.S.C. Section 2002.

87.1(2) *Delegation of authority.* The director delegates to the administrator of the compliance division, subject always to the supervision and review by the director, the authority to administer the Iowa estate tax. This delegated authority specifically includes, but is not limited to: the determination of the correct Iowa estate tax liability; making assessments against the taxpayer for additional tax due; authorizing refunds of excessive tax paid; executing releases of the tax lien; and the determination of reasonable cause for failure to file and timely pay the tax due and granting extensions of time to file the return and pay the tax due. The administrator of the compliance division may delegate the examination and audit of tax returns to the supervisors, examiners, agents and any other employees or representatives of the department.

This rule is intended to implement Iowa Code sections 421.2, 421.4 and chapter 451.

701—87.2(451) Confidential and nonconfidential information.

87.2(1) *Confidential information.* Federal tax returns, federal return information, inheritance tax returns, and the books, records, documents and accounts of any person, firm or corporation, including stock transfer books, requested to be submitted to the department for the enforcement of the Iowa estate tax law, shall be deemed and held confidential by the department, subject to public disclosure only as provided by law. See 26 U.S.C. Section 6103 pertaining to the confidentiality and disclosure of federal tax returns and federal return information. See rule 701—6.3(17A).

87.2(2) *Information not confidential.* Copies of wills, probate inventories, trust instruments, deeds, release of a real estate lien, and other documents which are filed for public record are not deemed confidential by the department.

This rule is intended to implement Iowa Code chapter 22, and Iowa Code chapters 450 and 451 as amended by 1992 Iowa Acts, Second Extraordinary Session, chapter 1001.

701—87.3(451) Tax imposed, tax returns, and tax due.

87.3(1) *Tax imposed and tax due.* Iowa Code sections 451.2 and 451.8 impose a tax equal to the maximum amount of credit allowable under 26 U.S.C. Section 2011 of the Internal Revenue Code for state death taxes paid on property included in the gross estate of the decedent. The credit allowable under the federal statute is not limited to the Iowa inheritance tax imposed under Iowa Code chapter 450 on the property in the decedent's gross estate, but also includes any other estate, legacy or succession taxes imposed by the state on the property. The Iowa estate tax qualifies as an estate tax specified in the federal credit statute. However, the tax due and payable, as distinguished from the tax imposed, is the maximum credit allowable under 26 U.S.C. Section 2011, less the Iowa inheritance tax paid on the property included in the gross estate of the decedent.

Therefore, the Iowa estate tax due and payable is the amount which the maximum credit allowable under 26 U.S.C. Section 2011 exceeds the Iowa inheritance tax paid.

87.3(2) *Duty of the taxpayer.* The taxpayer does not have the option of electing on the federal estate return, to claim only the Iowa inheritance tax paid on property included in the gross estate of the decedent, or to claim the maximum credit allowed under 26 U.S.C. Section 2011 of the Internal Revenue Code. The maximum credit allowable under the federal statute must be claimed on the federal estate tax return. If the taxpayer has filed a federal estate tax return claiming an amount of credit less than the maximum credit allowable, the taxpayer has the duty to amend the federal estate tax return and claim the maximum credit allowable.

If there is a change in the amount of inheritance tax paid or in the amount of the maximum federal credit allowable for state death taxes paid (such as the result of a federal audit or an audit of the inheritance tax return) which results in an estate tax, or additional estate tax due, the taxpayer has the duty to promptly report the change to the department on an amended return, and pay the tax, or additional tax due, together with any penalty and interest. See Iowa Code section 451.8.

Effective July 1, 1998, there is no longer a requirement for safe deposit boxes to be inventoried and reported to the department prior to the delivery of the assets to the personal representative, transferee, joint owner or beneficiary.

87.3(3) *Form of return.* The final inheritance tax return form provided for in 701—subrule 86.2(2) shall be the return for reporting the Iowa estate tax due. The amount of the Iowa estate tax due shall be listed separately on the return from the amount of the inheritance tax shown to be due.

87.3(4) *Liability for the tax.* The personal representative of the decedent's estate and any person, including a trustee, in actual or constructive possession of any property included in the gross estate, have the duty to file the return with the department and pay the tax due. The shares of heirs and beneficiaries abate for the payment of the tax as provided in Iowa Code sections 633.436 and 633.437 in the same manner as they abate for the payment of the federal estate tax. See *Bergren v. Mason,* 163 N.W.2d 374 (Iowa 1968) for the proper method to abate shares to pay the federal estate tax.

Effective for estates with decedents dying on or after July 1, 1999, all the provisions of Iowa Code chapter 450 regarding liens, determination, imposition, payment, collection of inheritance tax, computation and imposition of penalty and interest upon delinquent taxes and the confidential aspects of the tax return also apply to the administration of estate tax imposed under this chapter, except to the extent that such rules may conflict with Iowa Code chapter 451 and the rules set forth in this chapter. The exceptions of the lien provisions found in Iowa Code section 450.7 do not apply to this chapter.

87.3(5) *Computation of the tax.*

a. Iowa decedent. If the decedent was a resident of Iowa at the time of death and all of the property included in the gross estate has a situs in Iowa, the total amount allowable as a credit under 26 U.S.C. Section 2001 shall be the tax imposed. If part of the gross estate of an Iowa resident decedent consists of property with a situs at death in a state other than Iowa, the tax imposed shall be prorated in the ratio that the Iowa property included in the gross estate bears to the total gross estate.

EXAMPLE 1.

Decedent dies July 3, 1997, a resident of Iowa. The estate was bequeathed in full to inheritance tax-exempt children, except for a $10,000 bequest to one niece.

Total gross assets =	$1,200,000
Less debts and expenses (except federal estate tax)	(300,000)
Federal adjusted gross estate =	$900,000
Federal tax computation:	
gross federal estate tax =	306,800
less 1997 unified credit	(192,800)
less credit for state death tax paid	(27,600)
Net federal estate tax due =	$86,400
Iowa tax computation:	

Inheritance tax on niece's bequest	1,000
Iowa estate tax equals the federal credit for state death taxes paid	27,600
Less inheritance tax due	(1,000)
Estate tax due	26,600
Total Iowa tax due (1,000 + 26,600) =	$27,600

All of the decedent's assets have a situs in Iowa; therefore, the full amount of the credit allowable for state death taxes, less the Iowa inheritance tax, is the Iowa estate tax.

For simplicity in Example 2, the values used are the same for federal and state purposes and the debts and expenses are charged to the Iowa estate, even though under Iowa Code section 450.12, certain Minnesota expenses are not deductible in computing the Iowa inheritance tax. All liabilities, except mortgages, are prorated.

EXAMPLE 2.

Decedent dies July 3, 1997, a resident of Iowa, owning a vacation home in Minnesota. The estate was bequeathed in full to inheritance tax-exempt children, except for a $10,000 bequest to one niece.

Total gross assets:	
Iowa	$950,000
Minnesota	250,000
Total	1,200,000
Less debts and expenses (except for federal estate taxes)	(300,000)
Federal adjusted gross estate =	900,000
Federal tax computation:	
gross federal estate tax =	306,800
less 1997 unified credit	(192,800)
less credit for state death tax paid	(27,600)
Net federal estate tax due =	86,400
Iowa tax computation:	
Inheritance tax on niece's bequest	1,000
Iowa estate tax	
Proration:	
Iowa $950,000	
Total $1,200,000 = 79.17%	
Iowa portion of federal credit for state death taxes paid:	
$27,600 × 79.17% =	$21,850.92
Less inheritance tax due	($1,000.00)
Iowa estate tax =	$20,850.92
Total Iowa tax due (1,000 + 20,850.92) =	$21,850.92

b. Nonresident decedent. If the gross estate of a nonresident decedent includes property with a situs in the state of Iowa, the tax imposed is the maximum amount of the federal credit for state death taxes allowable prorated on the basis the Iowa situs property in the gross estate bears to the total gross estate. For simplicity in the following two examples, it is assumed the values are the same for federal and state purposes and the debts, expenses and federal estate tax are prorated between Iowa and Arizona even though certain liabilities are not prorated under Iowa Code section 450.12.

EXAMPLE 1.

Decedent died a resident of Arizona on July 3, 1997. The estate was bequeathed in full to tax-exempt children.

Total gross estate:	
Iowa real estate	$750,000
Other property	450,000
Total gross estate:	1,200,000
Less debts and expenses (except federal estate tax)	(300,000)
Net adjusted gross estate =	900,000
Federal tax computation:	
Gross federal estate tax =	306,800
Less 1997 unified credit	(192,800)
Less credit for state death tax paid	(27,600)
Net federal estate tax due =	86,400
Iowa estate tax computation:	
Inheritance tax =	-0-
Iowa estate tax proration:	
Iowa gross $750,000	
Total gross $1,200,000 = 62.50%	
Iowa portion of federal credit for state death tax paid: 27,600 × 62.50%	
Iowa estate tax =	$17,250

EXAMPLE 2.

Decedent died a resident of Arizona on July 3, 1997, with the same property as set forth in Example 1. The estate consisted of four separate $100,000 bequests to non-exempt individuals with the rest of the estate going to charity.

Iowa portion of each bequest: $100,000 × 62.50% =	$62,500
Tax on each bequest =	$6,500
Total Iowa inheritance tax due: $6,500 × 4 =	$26,000
Total estate tax due	-0-
Iowa tax due =	$26,000

The Iowa real property is part of the residual estate from which bequests are paid. See Estate of Dennis M. Billingsley, Emmet County District Court, Case No. 13394 (July 15, 1982).

87.3(6) *Value to use.* For the purpose of computing the amount of the tax imposed in both resident and nonresident estates, the value of the property in the gross estate as determined for federal estate tax purposes, and not the value for state inheritance tax, or other state succession taxes, shall be the value on which the tax is computed.

87.3(7) *Return and payment due date.* For estates of decedents dying prior to July 1, 1986, the return shall be filed with the department and the tax due paid within 12 months after the decedent's death, unless an extension of time has been granted by the department, in which case the return shall be filed and the tax paid within the time prescribed by the extension of time. For estates of decedents dying on or after July 1, 1986, the return must be filed and the tax due paid on or before the last day of the ninth month after the death of the decedent, unless an extension of time has been granted, in which case the return must be filed and the tax due paid within the time prescribed by the extension of time. See 701—paragraph 86.2(6)*"a"* for the due date when the last day of the ninth month following death falls on a Saturday, Sunday, or legal holiday.

87.3(8) *Extension of time.* The extension of time form for inheritance tax provided for in 701—subrule 86.2(9) shall be the extension of time form for the Iowa estate tax. If an extension of time based on hardship is requested, evidence of such hardship is to be provided with the filing of the extension request. Unless the extension of time specifically states to the contrary, an extension of time to file the final inheritance tax return, and pay the tax due, shall also be an extension of time for the same period, to pay the Iowa estate tax. Provided, however, in no event shall the extension be for a period of time greater than the period of time allowed for claiming the credit for state death taxes paid under 26 U.S.C. Section 2011 of the Internal Revenue Code. Provided, further, if the federal estate tax liability is paid prior to the expiration of an extension of time to pay the Iowa estate tax, the tax shall be

due and payable at the time the federal estate tax is paid regardless of the extension of time period. The application for an extension of time to file the return and pay the tax must be filed with the department prior to the time the return is required to be filed and the tax paid.

87.3(9) Renumbered as 701—10.90(451), IAB 1/23/91.

87.3(10) Renumbered as 701—subrule 10.90(1), IAB 1/23/91.

87.3(11) Renumbered as 701—subrule 10.90(2), IAB 1/23/91.

87.3(12) Renumbered as 701—subrule 10.90(3), IAB 1/23/91.

87.3(13) *Interest—during an extension of time.* During the period of an extension of time, any unpaid tax shall draw interest at the rate set forth in rule 701—10.2(421). Payments made during an extension of time shall first be credited to penalty, interest and the balance, if any, to the tax due. Estate tax is still due for estates that have deferred Iowa inheritance tax. Any outstanding tax obligation remaining after the expiration of an extension of time shall be deemed delinquent and shall be subject to penalty and draw interest at the rate set forth in rule 701—10.2(421). No discount is allowed for early payment of the tax due.

This rule is intended to implement Iowa Code sections 421.27, 450.63, 451.2, 451.5, 451.6, 451.8, 451.12, and 1997 Iowa Acts, chapter 60, sections 1 and 2.

701—87.4(451) Audits, assessments and refunds. 701—subrules 86.3(1) to 86.3(3) providing for the audit, assessment and refund of the Iowa inheritance tax shall also be the rules for the audit, assessment and refund of the Iowa estate tax.

This rule is intended to implement Iowa Code sections 451.3, 451.6, 451.8, 451.10 and 451.12.

701—87.5(451) Appeals.

Rule 701—86.4(450), providing for an appeal to the director and a subsequent appeal to district court under the Iowa Administrative Procedure Act in inheritance tax disputes, shall also be the rule for appeals in Iowa estate tax disputes. See 701—Chapter 7.

701—87.6(451) Applicable rules. Unless otherwise provided in this chapter, the rules found in 701—Chapter 86 apply to the administration of estate tax including, but not limited to, rules regarding statutes of limitations.

This rule is intended to implement Iowa Code chapter 17A and sections 450.94 and 451.12.

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CHAPTER 88
GENERATION SKIPPING TRANSFER TAX
[Prior to 12/17/86, Revenue Department[730]]

701—88.1(450A) Administration.

88.1(1) *Definitions.* The following definitions cover and supplement the definitions contained in Iowa Code section 450A.1.

"Administrator" means the administrator of the compliance division of the department of revenue.

"Compliance division" is the administrative unit of the department created by the director to administer the inheritance, estate, generation skipping transfer, and fiduciary income tax laws of the state.

"Department" means the department of revenue.

"Director" means the director of revenue.

"Direct skip" means the same as the term is defined in Section 2612(c) of the Internal Revenue Code.

"Tax" means the generation skipping transfer tax imposed by Iowa Code chapter 450A.

"Taxable distribution" means the same as the term is defined in Section 2612(b) of the Internal Revenue Code.

"Taxable termination" means the same as the term is defined in Section 2612(a) of the Internal Revenue Code.

"Taxpayer" means the transferee of the property subject to the generation skipping transfer in case of a taxable distribution or the trustee and the transferee in case of a taxable termination.

"Transferor," "trust," "trustee," and *"interest"* mean the same as those respective terms are defined in Section 2652 of the Internal Revenue Code.

88.1(2) *Delegation of authority.* The director delegates to the administrator of the compliance division, subject always to the supervision and review by the director, the authority to administer the generation skipping transfer tax. This delegated authority specifically includes, but is not limited to: the determination of the correct generation skipping transfer tax liability; making assessments against the taxpayer for additional tax due; authorizing refunds of excessive tax paid; executing releases of the tax lien; and granting extensions of time to file the return and pay the tax due. The administrator of the compliance division may delegate the examination and audit of the tax returns to such supervisors, examiners, agents and any employees or representatives of the department as the administrator may designate.

This rule is intended to implement Iowa Code sections 421.2 and 421.4 and chapter 450A.

701—88.2(450A) Confidential and nonconfidential information.

88.2(1) *Confidential information.* Federal tax returns, federal return information, Iowa generation skipping transfer tax returns, and the books, records, documents and accounts of any person, firm or corporation, including stock transfer books, requested to be submitted to the department for the enforcement of the generation skipping transfer tax law, shall be deemed and held confidential by the department, subject to public disclosure only as provided by law. See 26 U.S.C. Section 6103 pertaining to the confidentiality and disclosure of federal tax returns and federal return information. See rule 701—6.3(17A).

88.2(2) *Information not confidential.* Copies of wills, release of real estate liens, probate inventories, trust instruments, deeds and other documents which are filed for public record are not deemed confidential by the department.

This rule is intended to implement Iowa Code chapters 22 and 450A.

701—88.3(450A) Tax imposed, tax due and tax returns.

88.3(1) *Tax imposed—general rule.* Iowa Code section 450A.2 imposes tax equal to the maximum federal credit allowable (5 percent) under 26 U.S.C. Section 2604 of the Internal Revenue Code for state generation skipping transfer taxes paid on property included in certain generation skipping transfers. The tax imposed by Iowa Code section 450A.2 qualifies as a generation skipping transfer tax specified

in the federal credit statute. The federal credit is not available for every generation skipping transfer taxable under 26 U.S.C. Section 2601 of the Internal Revenue Code. The credit is available only on those generation skipping transfers occurring at the same time as, and as the result of, the death of an individual.

Therefore, a federal generation skipping transfer occurring at the time of a gift of property which is unrelated to the death of an individual is not eligible for the federal credit allowed by Section 2604 of the Internal Revenue Code.

88.3(2) *Tax imposed—limitation.* Iowa Code section 450A.14 imposes a limitation on the amount of tax imposed under Iowa Code section 450A.2. The taxpayer's total federal and state generation skipping tax liability cannot be greater than the tax payable had chapter 450A not been enacted.

88.3(3) *Tax due—no credit for inheritance tax paid.* Any inheritance tax paid on property included in the estate of the individual whose death is the event imposing the federal tax is not a credit against the generation skipping transfer tax imposed by Iowa Code section 450A.2, although the inheritance tax is a credit against the Iowa estate tax imposed by Iowa Code chapter 451 on this property.

Nor is the inheritance tax paid on the property in a prior estate which is now included in a taxable generation skipping transfer a credit against the tax imposed by Iowa Code section 450A.2. Therefore, the tax due is the maximum credit allowable under 26 U.S.C. Section 2604 of the Internal Revenue Code, subject to the limitation in subrule 88.3(2).

88.3(4) *Duty of the taxpayer.* It is the duty of the taxpayer to file the return prescribed by subrule 88.3(5) and pay the tax due within the time prescribed by law (taking into consideration any extension of time to file and pay). A copy of the federal generation skipping transfer tax return must be submitted to the department at the time the Iowa return is filed. The taxpayer shall keep books, records and accounts as are reasonably necessary to substantiate the amount of the federal tax and value of the property included in a generation skipping transfer subject to tax, and upon request the taxpayer shall furnish information to the department as may be reasonably necessary to enable the department to determine the correct tax due. It is the duty of the taxpayer to claim the maximum amount of the federal credit allowable on the federal generation skipping transfer tax return, subject to the limitation in subrule 88.3(2).

If there is a change in the amount of the maximum federal credit allowable, or the amount allowable under subrule 88.3(2), against the federal tax on a generation skipping transfer (such as a result of a federal audit or in the amount and value of the property included in a generation skipping transfer), the taxpayer has the duty to promptly report the change to the department on an amended return, and pay the tax, or additional tax due, together with any penalty and interest. See Iowa Code section 450A.11.

Effective July 1, 1998, there is no longer a requirement for safe deposit boxes to be inventoried and reported to the department prior to the delivery of the assets to the personal representative, transferee, joint owner or beneficiary.

88.3(5) *Form and due date of the return.* The form of the return for reporting the generation skipping tax to the department shall be in such form as may be prescribed by the director. It shall provide for such schedules of property subject to tax, deductible expenses, losses, and tax computation tables to conform as nearly as possible to the form of the federal generation skipping transfer tax return. The return must be filed with the department and the tax due paid on or before the last day of the ninth month following the death of the individual whose death is the event causing the imposition of the federal generation skipping transfer tax. If an extension of time has been granted, the return must be filed and any tax, penalty, and interest due must be paid on or before the expiration of the extension of time.

88.3(6) *Liability for the tax.* The transferee of property in a generation skipping transfer subject to tax is personally liable for the tax to the extent of the value of the property received determined under 26 U.S.C. Section 2624. In addition, the trustee and transferee of property in a taxable termination are personally liable for the tax attributable to such termination to the extent of the value of the property under their control. Value for the purpose of determining the extent of the liability of a transferee or trustee is determined at the time of the distribution or termination. Neither the individual's estate whose death is the event imposing the tax, nor its personal representative, is liable for the tax imposed (unless the personal representative is also the transferee or trustee of the property subject to tax).

88.3(7) *Situs of property.* For the purpose of the tax imposed by Iowa Code chapter 450A, the situs of intangible personal property included in a generation skipping transfer subject to tax is the state in which the transferor was a resident at the time of death or in the case the transferor is a trustee, the residence of the trustee at the time of the imposition of the federal generation skipping transfer tax. The situs of real and tangible personal property included in a transfer subject to tax is the state in which the property is located, regardless of the transferor's or trustee's place of residence.

88.3(8) *No reciprocity.* Iowa Code chapter 450A makes no provision for reciprocity to prevent taxation by more than one state of intangible personal property included in a taxable generation skipping transfer. Therefore, intangible personal property attributable to an Iowa transferor or trustee which may have acquired a business situs and may be subject to tax in another state (due to the location of bank accounts, stock certificates and like instruments) is not exempt from the Iowa tax simply for the reason it is subject to tax in another jurisdiction. See *Curry v. McCanless,* 307 U.S. 357, 83 L.Ed. 1339, 59 S.Ct. 900 (1939); *State Tax Commission of Utah v. Aldrich,* 316 U.S. 174, 86 L.Ed. 1358, 62 S.Ct. 1008 (1942).

88.3(9) *Tangible and intangible property—time of classification.* The classification of property as tangible or intangible is determined by the law of the state of the transferor's or trustee's residence. For the purpose of determining whether an Iowa generation skipping transfer tax is due, the classification of the property as tangible or intangible shall be made at the time of the death of the individual causing the generation skipping transfer. The classification of the property in a taxable transfer at the time of the original grantor's death is not determinative of whether the transferred property will be subject to tax upon the individual's death which caused the imposition of the tax. This rule is illustrated by the following two examples:

EXAMPLE 1. A executed a will in 1996 devising an Iowa farm in trust to pay the income to his son, B, for life, and upon B's death the trust is to terminate and the corpus paid to B's children, C and D, in equal shares. If upon B's death the Iowa farm is still part of the trust assets, the value of the farm is subject to the Iowa generation skipping transfer tax regardless of the state of residence of the transferor. However, if during B's lifetime the farm is sold and the proceeds placed in the trust, the trust assets are subject to the Iowa generation skipping transfer tax only if the property had a situs in Iowa at the time of death, because at B's death the trust assets are classified as intangible personal property.

EXAMPLE 2. A, a resident of Chicago, Illinois, by will devised $500,000 in trust to pay the income to his son B, a resident of New York, for life and upon B's death the trust is to terminate and the corpus paid to B's children, C and D, in equal shares. If during B's lifetime the trust purchases an Iowa farm and it is part of the trust assets when B dies, the value of the farm is subject to the Iowa generation skipping transfer tax. Also, if at the time of B's death the trust assets are still classified as intangible, the trust assets would be subject to the Iowa tax if the trustee was an Iowa resident at the time of death.

NOTE: In the two examples it is assumed the generation skipping transfers are in excess of the $1 million exemption.

88.3(10) *Computation of the tax.*

a. In general. The Iowa generation skipping tax is the maximum credit allowed by 26 U.S.C. Section 2604 against the amount of the federal generation skipping transfer tax. The maximum federal credit is 5 percent of the federal tax imposed on the transfer. In this respect, it differs from the federal credit for state death taxes paid under 26 U.S.C. Section 2011 which is a graduated percentage of the value of the property included in the federal adjusted taxable estate. As a result, the valuation of the property included in a generation skipping transfer is only relevant for computing the Iowa generation skipping transfer tax when it is used as the basis for prorating the federal generation skipping transfer tax, when the property subject to the generation skipping transfer tax has a situs in more than one state.

b. Computation of the tax—situs in more than one state. When part of the property included in a generation skipping transfer which is eligible for the credit for state generation skipping transfer tax has situs in Iowa and part in another state or states, the maximum federal credit which is allowed under 26 U.S.C. Section 2604 must be prorated among the states where the property has a situs. In this event, the Iowa generation skipping transfer tax is computed by multiplying the federal tax on the entire transfer by the 5 percent maximum federal credit allowable. This amount is then multiplied by a fraction of which

the value of the Iowa property is the numerator and the value of the total generation skipping transfer is the denominator. The resulting amount is the Iowa generation skipping transfer tax. The fact that other states where part of the property has a situs do not have a generation skipping transfer tax, or the state tax is a lesser percentage than the maximum federal credit allowable (5 percent), is not relevant to the computation of the Iowa tax.

This subrule can be illustrated by the following:

EXAMPLE. A generation skipping transfer occurs in an Illinois trust in 1996 by reason of the death of A. The property in the generation skipping transfer consists of $650,000 in stocks and bonds and an Iowa farm worth $240,000, for a total generation skipping transfer of $890,000. Assuming the lifetime exemption does not apply, the federal generation skipping transfer tax is 55 percent of $890,000, or $489,500. The maximum federal credit allowable is 5 percent of $489,500, or $24,475. The Iowa portion of the maximum federal credit is:

$$\frac{\text{Iowa prop. } \$240{,}000}{\text{Total prop. } \$890{,}000} \times \$24{,}475 = \$6{,}600 \text{ which is the Iowa tax.}$$

In this example, the result would not change if Illinois did not have a generation skipping transfer tax or if its tax were a smaller percentage than the maximum 5 percent credit allowed by the federal statute.

88.3(11) *Value to use.* For the purpose of computing the amount of the tax imposed on generation skipping transfers when the property has a situs in Iowa and another state or states, the value of the transferred property as determined for federal generation skipping transfer tax purposes shall be the value on which the tax is prorated.

88.3(12) *Extension of time.* In the case of hardship, which is a factual determination made on a case-by-case basis, the director may grant an extension of time to file the return and pay the tax due for a period not to exceed ten years after the death of the individual whose death is the event causing the imposition of the federal generation skipping transfer tax. Provided, however, in no event shall the extension be for a period of time greater than the period of time allowed for claiming the credit allowed for state generation skipping transfer tax paid, allowable under 26 U.S.C. Section 2662. If the federal generation skipping transfer tax liability is paid prior to the expiration of an extension of time to pay the Iowa generation skipping transfer tax, the tax shall be due and payable at the time the federal generation skipping transfer tax is paid regardless of the extension of time period. The application for an extension of time to file the return and pay the tax due shall be in a form as the director may prescribe and must be filed with the department prior to the time the return is required to be filed and the tax due paid.

88.3(13) *Discount.* No discount is allowed for early payment of the tax due.

This rule is intended to implement Iowa Code sections 450A.2 to 450A.5 and 450A.8 to 450A.14.

701—88.4(450A) Audits, assessments and refunds. 701—subrules 86.3(1) to 86.3(3) providing for the audit, assessment and refund of the Iowa inheritance tax shall also be the rules for the audit, assessment and refund of the Iowa generation skipping transfer tax.

This rule is intended to implement Iowa Code sections 450A.2, 450A.4, 450A.5, 450A.8 to 450A.12 and 450A.14.

701—88.5(450A) Appeals. Rule 701—86.4(450A) providing for an appeal to the director and a subsequent appeal to district court under the Iowa Administrative Procedure Act in inheritance tax disputes shall also be the rule for appeals in Iowa generation skipping transfer tax disputes. See 701—Chapter 7.

This rule is intended to implement Iowa Code chapter 17A and sections 450.94 and 450A.12.

701—88.6(450A) Generation skipping transfers prior to Public Law 99-514. Public Law 99-514 repealed the federal generation skipping transfer tax retroactive to June 11, 1976, and provided for a refund of any federal generation skipping transfer tax that had been paid. As a result of this federal

statute there is no Iowa generation skipping transfer tax on those transfers which are exempted from the federal tax under Public Law 99-514.

This rule is intended to implement Iowa Code chapter 450A and 1988 Iowa Acts, chapter 1028.

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CHAPTER 89
FIDUCIARY INCOME TAX

[Formerly fiduciary rules ch 48, See IAB 9/30/81]
[Prior to 12/17/86, Revenue Department[730]]

701—89.1(422) Administration.

89.1(1) *Definitions.* The following definitions cover 701—Chapter 89 and are in addition to the definitions contained in Iowa Code section 422.4.

"Administrator" means the administrator of the compliance division of the department of revenue or the personal representative of an intestate estate.

"Compliance division" is the organizational unit of the department created by the director to administer the inheritance, estate, generation skipping transfer, and fiduciary income tax laws.

"Department" means the department of revenue.

"Director" means the director of revenue.

"Gross income" includes any and all income prior to any deductions as set forth on the Iowa fiduciary return of income.

"Personal representative" means the executor, administrator or trustee of a decedent's estate.

"Tax" means the income tax imposed on estates and trusts under Iowa Code section 422.6.

"Taxable income" is the income of the fiduciary and also includes distributions to beneficiaries as set forth on the Iowa fiduciary return of income.

"Taxpayer" means the executor, administrator or other personal representative of a decedent's estate required to file a return for the estate and the decedent under Iowa Code sections 422.14 and 422.23. "Taxpayer" also means the trustee of a trust subject to tax under 26 U.S.C. Section 641 and required to file a return under 26 U.S.C. Section 6012(b), as well as the trustee of the bankruptcy estate of an individual under Chapter 7 or 11 of Title 11 of the United States Code.

89.1(2) *Delegation of authority.* The director delegates to the administrator of the compliance division, subject always to the supervision and review of the director, the authority to administer the fiduciary income tax. This authority specifically includes, but is not limited to: determining the correct fiduciary income tax liability; making tax liability assessments; issuing refunds; releasing tax liens; filing tax liability claims in probated estates and releasing the claims upon payment of the tax; and issuing the certificate of acquittance authorized by Iowa Code section 422.27. The administrator of the compliance division may delegate the examination and audit of tax returns to the supervisors, agents and employees and representatives of the department.

This rule is intended to implement Iowa Code sections 421.2, 421.4, 422.6, 422.23, 422.25, 422.26, 422.27 and 422.73.

701—89.2(422) Confidentiality.

89.2(1) *Confidential information.* The state and federal returns and accompanying schedules, and the taxpayer's books, records, documents and accounts of any person, firm or corporation are held confidential, except the information which is deemed a public record by state and federal law. See 26 U.S.C. Section 6103 of the Internal Revenue Code pertaining to the confidentiality and disclosure of federal tax returns and federal tax return information. See rules 701—6.3(17A) and 701—38.6(422) regarding the confidentiality of a decedent's individual income tax returns.

89.2(2) *Information not confidential.* Copies of wills, probate inventories, trust instruments, deeds and other documents which are filed for public record are not confidential. The fact alone that a return has or has not been filed with the department is not confidential information. 1976 Op. Att'y. Gen. 679.

89.2(3) *Documents to be filed.*

a. Estates of Iowa decedents. A copy of the inheritance tax return and probate inventory required by Iowa Code section 633.361 and 701—subrule 86.2(2) (relating to inheritance tax) and a copy of the decedent's will in testate estates shall be filed with the first fiduciary return of income, unless previously filed with the department for inheritance tax purposes.

b. Nonresident decedents—ancillary administration. If ancillary administration has been opened for the estate of a nonresident decedent, a copy of the inheritance tax return and probate inventory and

a copy of the decedent's will in testate estates shall be filed with the department, subject to the same conditions and requirements in estates of resident decedents. If ancillary administration has not been opened for a nonresident decedent with Iowa taxable income, a copy of the inventory filed in the primary estate, or the portion of the inventory listing the property generating the Iowa income and the decedent's will in testate estates, must be filed with the department with the first fiduciary return of income.

c. *Inter vivos trusts.* Inter vivos trusts with a situs in Iowa and inter vivos trusts with a situs outside Iowa with Iowa taxable income shall submit to the department with the first fiduciary return the following: (1) a copy of the trust instrument; (2) a list of the trust assets (those generating Iowa taxable income in case of trusts with a situs outside Iowa); and (3) an estimate of the fair market value of each asset. If the trust instrument is amended or additional assets are added to the trust corpus (additional assets which generate Iowa taxable income in case of trusts with a situs outside Iowa), a copy of the amended items must be submitted to the department with the first fiduciary return of income following the change.

d. *Testamentary trusts.* If the estate was not reported for inheritance tax purposes, a copy of the decedent's will and a list of assets in the trust corpus in testamentary trusts with a situs both within and without Iowa must be submitted to the department with the first fiduciary return of income.

e. *Safe deposit box.* Effective July 1, 1998, there is no longer a requirement for safe deposit boxes to be inventoried and reported to the department prior to the delivery of the assets to the personal representative, transferee, joint owner or beneficiary.

89.2(4) *Required records.* The taxpayer shall keep records and accounts necessary to substantiate reportable income and deductions. Upon request, the taxpayer shall furnish the department documents, such as copies of tax returns, court orders, trust instruments, annual reports, canceled checks and like information, as may be reasonably necessary to enable the department to determine the correct tax liability. *Tiffany v. County Board of Review,* 188 N.W.2d 343, 349 (Iowa 1971). For taxpayers using an electronic data interchange process or technology also see 701—subrule 11.4(4).

This rule is intended to implement Iowa Code sections 422.25, 422.27, 422.28, 422.73 and 1997 Iowa Acts, chapter 60, sections 1 and 2.

701—89.3(422) Situs of trusts.

89.3(1) *Testamentary trusts.* The situs of a testamentary trust for tax purposes is the state of the decedent's residence at the time of death until the jurisdiction of the court in which the trust proceedings are pending is terminated. In the event of termination and the trust remains open, the situs of the trust is governed by the same rules as pertain to the situs of inter vivos trusts.

89.3(2) *Inter vivos trusts.* If an inter vivos trust is created by order of court or makes an accounting to the court, its situs is the state where the court having jurisdiction is located until the jurisdiction is terminated. The situs of an inter vivos trust which is subject to the grantor trust rules under 26 U.S.C. Sections 671 to 679 is the state of the grantor's residence, or the state of residence of the person other than the grantor deemed the owner, to the extent the income of the trust is governed by the grantor trust rules.

If an inter vivos trust (other than a trust subject to the grantor trust rules in 26 U.S.C. Sections 671 to 679) is not required to make an accounting to and is not subject to the control of a court, its situs depends on the relevant facts of each case. The relevant facts include, but are not limited to: the residence of the trustees or a majority of them; the location of the principal office where the trust is administered; and the location of the evidence of the intangible assets of the trust (such as stocks, bonds, bank accounts, etc.). The residence of the grantor of a trust, not subject to the grantor trust rules under 26 U.S.C. Sections 671 to 679, is not a controlling factor as to the situs of the trust, unless the person is also a trustee. A statement in the trust instrument that the law of a certain jurisdiction shall govern the administration of the trust is not a controlling factor in determining situs. The residence of the beneficiaries of a trust is also not relevant in determining situs.

89.3(3) *Part year trust.* A trust that has its situs part of the year within Iowa and part of the same year outside of Iowa is to report its income on Iowa Form IA-1041. Essentially, to report the income, the trust will be treated similarly to a nonresident for Iowa income tax purposes. To complete the return, the trust should complete page one of Form IA-1041, the income and deductions portions of the form. The

income and deductions reported in these two portions of the form should include the trust's income only for the period during the tax year at issue when the trust had its situs in Iowa, and all Iowa source income for the tax year at issue, regardless of the situs of the trust. After the previous computation has been completed, then all of the trust's income for the tax year at issue, regardless of the source of the income, is to be reported by completing Schedule C. After Schedule C is completed, then lines 33 through 36 on the first page of the form must be completed to determine the Iowa fiduciary tax due.

This rule is intended to implement Iowa Code sections 422.6, 422.8, and 422.14.

701—89.4(422) Fiduciary returns and payment of the tax.

89.4(1) *Form of return.* The form of the fiduciary return shall be prescribed by the director. It shall conform as nearly as possible to the federal fiduciary return.

89.4(2) *Required federal returns and schedules.* Nonresident estates with Iowa taxable income and trusts with situs outside Iowa with Iowa taxable income must submit a copy of the federal fiduciary return with the Iowa return. Estates of Iowa decedents and trusts with a situs in Iowa must submit copies of the federal schedules that substantiate gross income, deductions and ordinary and throwback distributions to beneficiaries with the Iowa return.

89.4(3) *Same form for nonresident estates and foreign situs trusts.* Nonresident estates and foreign situs trusts shall use the same form for reporting Iowa taxable income as prescribed for resident estates and trusts with a situs in Iowa.

89.4(4) *Accounting period—tax year.* The initial fiduciary return may reflect either a calendar or fiscal year accounting period, without the department's prior approval. If a fiscal year is elected, it may end on the last day of any month, except December, but in no case shall the fiscal year adopted be for a period longer than the last day of the month preceding the decedent's death or the month the trust was created. The accounting period for the purpose of the tax imposed by Iowa Code section 422.6 must be the same accounting period that is adopted for federal income tax purposes. This limitation is equally applicable to estates of resident and nonresident decedents and trusts with a situs within and without Iowa. If the taxpayer has not adopted a taxable year prior to the time the return is due to be filed and the tax paid, the taxable year is a calendar year until authorization is granted to change to a fiscal year. See 26 U.S.C. Sections 441 to 443, federal regulations Sections 1.441 - 1(g)(3) and 1.442.2.

The permissible taxable years are illustrated by the following examples:

EXAMPLE 1. Decedent died July 4, 1990. The taxable year for the estate commences the day after the decedent's death (July 5, 1990) and will end December 31, 1990, if a calendar year is adopted as the taxable year. If a fiscal year is adopted, it can end on July 31, 1990, or the last day of any future month (except December 31, 1990), but no later than June 30, 1991, subject to the condition that it is selected prior to the time the return and payment are originally due.

EXAMPLE 2. Grantor creates an irrevocable trust on July 27, 1989. On July 1, 1990, the trustee filed the initial fiduciary return of income, adopting at that time a taxable year ending November 30, 1989. Since the return was due March 17, 1990 (March 15 was a Saturday) for federal income tax purposes and March 31, 1990, for Iowa income tax purposes, it is delinquent and a fiscal year accounting period is disallowed and the trust taxable year is the calendar year.

89.4(5) *Short year returns.* If an estate or trust is in existence only a portion of the taxable year, a return must be filed for the partial year in accordance with subrule 89.4(6).

89.4(6) *Minimum filing requirements.*

a. General rule. A fiduciary return of income must be filed if the gross income of the estate or trust for the taxable year is $600 or more, regardless of any tax liability.

b. Exception to the general rule. A final fiduciary return of income must be filed for the taxable year in which an estate or trust is closed, regardless of the amount of gross income, if an income tax certificate of acquittance is requested. The final fiduciary return of income constitutes an application for an income tax certificate of acquittance pursuant to Iowa Code sections 422.27, 633.477 and 633.479. For a certificate of acquittance to be received, the appropriate box on the final fiduciary return must be checked to request the certificate.

89.4(7) *Amended returns.* An amended return must be filed if there is a change in income or deductions that results in a tax or additional tax due, or in a change in income, deductions or credits distributable to a beneficiary. An amended return may be filed in lieu of a claim for refund when a change in reportable income or deductions results in a tax overpayment. See 701—subrules 43.3(8) and 43.3(15) for the period of time for making a claim for a refund of excess tax paid.

89.4(8) *Return due date.* The fiduciary return must be filed with the department and the tax due paid in full on or before the last day of the fourth month following the end of the taxable year. Payment of 90 percent of the tax due with the filing of a return will grant a taxpayer a six-month automatic extension of time to pay the remaining tax due. If the due date falls on a Saturday, Sunday or legal holiday, the due date is the next day which is not a Saturday, Sunday or legal holiday as defined in Iowa Code section 4.1. Returns not timely filed with 90 percent of the tax timely paid are subject to penalty as provided in rule 89.6(422).

89.4(9) *Duties of the taxpayer.*

a. Income of the estate or trust. A taxpayer must timely file a fiduciary return if the minimum filing requirements specified in subrule 89.4(6) are met and must pay 90 percent of the tax due. Receipt of the return with 90 percent of the tax due paid will result in an automatic six-month extension of time to pay the remaining tax due. The department is not required to file a claim for taxes in the estate proceedings and have the claim allowed before the tax is paid. *In re Estate of Oelwein,* 217 Iowa 1137, 1141, 251 N.W. 694 (1933); *Findley v. Taylor,* 97 Iowa 420, 66 N.W. 744 (1896). The personal representative of an estate must pay the tax on income from property in the personal representative's possession, prior to applying the income to estate obligations. See Iowa Code section 633.352.

b. Decedent's final individual income tax return. The executor, administrator, or other personal representative of the decedent's estate must file an individual income tax return for the decedent for the year of the decedent's death if the gross income attributable to the decedent for the part of the taxable year ending with death equals or exceeds the minimum filing requirements. See 701—subrules 39.1(1) to 39.1(3) and 39.1(5) for the minimum filing requirements for individual income tax. If the surviving spouse of a decedent has not remarried during the balance of the taxable year and has the same taxable year as the decedent, the personal representative of the decedent's estate may file a joint return with the surviving spouse for the taxable year of death. In the event of such an election, the joint return must include the surviving spouse's income for the entire taxable year and the decedent's income for the portion of the taxable year ending with death. Income attributable to property owned by the decedent and the decedent's rights to income received after the day of the decedent's death are income of the decedent's estate or the persons succeeding to the property or rights to income. See Iowa Code sections 633.350 to 633.353 for the circumstances under which the estate is charged with the income from the decedent's property or the decedent's rights to income. Income from property held by the decedent and others in joint tenancy received after the decedent's death is charged to the surviving joint tenants, not to the decedent's estate.

The final return for a decedent may be filed at any time after the decedent's death, but in no event later than the last day of the fourth month following the end of the decedent's normal taxable year. The final income tax return of the decedent, if the minimum filing requirements are met, must be filed prior to the time an income tax certificate of acquittance is requested, even though this may require the early filing of the return. Therefore, filing a joint return with the surviving spouse is precluded if the decedent's final return is required to be filed prior to the end of the normal taxable year.

c. Decedent's prior year returns. The personal representative of the decedent's estate is not limited to filing the decedent's final return and paying the tax due. In addition, the personal representative has the duty to file a return, if none was filed, and to pay any additional income tax owed by the decedent that may become due by reason of an audit of the decedent's income or prior year returns. The personal representative's duty to pay the tax, or additional tax, is limited to the probate property subject to the jurisdiction of the court. The probate property must be applied to the payment of the decedent's tax liability according to the order for paying debts and charges specified in Iowa Code section 633.425.

d. Withholding agent—general rule. The personal representative of a decedent's estate and the trustee of a trust shall withhold Iowa income tax from a distribution of Iowa taxable income to

beneficiaries who are nonresidents of Iowa. This withholding requirement applies to both Iowa and non-Iowa situs estates and trusts. See Iowa Code subsection 422.16(12) and 701—subrule 46.4(2), item "5," for the duty to withhold. The amount of income tax to be withheld shall be computed either based on 5 percent of the taxable Iowa income distributed or according to tax tables provided by the department. See 701—subrule 46.3(3) for the required withholding form and return to be filed with the department.

e. Exception to the general rule. If a nonresident beneficiary of an estate or trust who is to receive a distribution of Iowa taxable income files with the department a nonresident declaration of estimated tax and pays the estimated tax on the income declared in full, 89.4(9)*"d"* does not apply to the amount of the income declared. A certificate of release from the duty to withhold will be issued to the withholding agent upon request. See Iowa Code sections 422.16(12) and 422.17 and 701—subrule 46.4(3) relating to the release certificate. In addition, an estimated payment of withholding can occur if a distribution is being made to a taxable beneficiary. An estimated payment of withholding should be based on 5 percent of the taxable Iowa income. It is the department's policy to allow estimated payments of withholding to be paid directly to the department.

f. Withholding not required. Withholding is not required from the distribution made by estates and trusts of Iowa taxable income to beneficiaries who are residents of Iowa.

g. Beneficiary's share of income, deductions and credits. After the final distribution of income for the taxable year, but prior to the date for filing a beneficiary's individual income tax return, the personal representative of an estate and the trustee of a trust shall furnish each beneficiary receiving a distribution from an estate or trust a written statement specifying the amount and types of income subject to Iowa tax and the kinds and amounts of the deductions and credits against the tax. A copy of the federal schedule K-1, Form 1041, adapted to reflect Iowa taxable income, may be substituted in lieu of the statement.

h. Liability of a withholding agent. A withholding agent is personally liable for the amount of the tax required to be withheld under Iowa Code subsection 422.16(12) if the income tax liability of a nonresident beneficiary which is attributable to the distribution is not paid and, in addition, is personally liable for any penalty and interest due if the tax required to be withheld is not paid to the department within the time prescribed by law. See rules 701—44.1(422) to 44.4(422) for the application and computation of penalty and interest on income tax required to be withheld.

This rule is intended to implement Iowa Code sections 422.6, 422.8, 422.16, 422.21, 422.23, 422.25, 422.27, 633.352 and 633.425.

701—89.5(422) Extension of time to file and pay the tax.

89.5(1) *Automatic extension of time to file.*

a. For tax years beginning on or after January 1, 1986. An automatic two-month extension of time to file the fiduciary income tax return will be granted by the department if the requirements set out in subparagraphs (1) and (2) are met.

(1) Filing the extension application on or before the due date of the return. See subrule 89.4(8) for what constitutes timely filing.

(2) Payment of at least 90 percent of the tax by the due date. At least 90 percent of the tax required to be shown due must have been paid on or before the due date of the return. To determine whether or not 90 percent of the tax was "paid" on or before the due date, the aggregate amounts of tax credits applicable to the return plus the tax payments which were made on or before the due date are divided by the tax required to be shown due on the return. If the aggregate of the tax credits and the tax payments is equal to or greater than 90 percent of the tax required to be shown due, the taxpayer will have met the "90 percent" test and no penalty will be assessed.

If the time for filing is extended, interest as provided by law, from the date the return originally was required to be filed to the date of actual payment of the tax, is to be computed on the unpaid tax. See rule 701—10.2(421) for the statutory rate of interest commencing on or after January 1, 1982.

b. For tax years beginning on or after January 1, 1991. See 701—subrule 39.2(4).

89.5(2) *Additional extension of time to file beyond the automatic extension.* For tax years beginning on or after January 1, 1986. The department may grant an additional extension of time to file the

fiduciary return, not to exceed four months, provided an application for additional time is filed prior to the expiration of the automatic extension of time.

89.5(3) *Extension of time for the decedent's final tax return.* 701—subrule 39.2(4) which provides for extensions of time to file individual income tax returns will apply to the decedent's final tax return.

89.5(4) *Form of application and place of filing.* The application for an extension of time to file the fiduciary income tax return must be made on forms prescribed by the director. The application must be filed with the department prior to the date the return is due, directed to the Compliance Division, Examination Section, P.O. Box 10456, Des Moines, Iowa 50306.

This rule is intended to implement Iowa Code section 422.21.

701—89.6(422) Penalties. Renumbered as 701—10.101(422), IAB 1/23/91.

89.6(1) Renumbered as 701—subrule 10.101(1), IAB 1/23/91.

89.6(2) Renumbered as 701—subrule 10.101(2), IAB 1/23/91.

89.6(3) Renumbered as 701—subrule 10.101(3), IAB 1/23/91.

89.6(4) Renumbered as 701—subrule 10.101(4), IAB 1/23/91.

89.6(5) Renumbered as 701—subrule 10.101(5), IAB 1/23/91.

89.6(6) Renumbered as 701—subrule 10.101(6), IAB 1/23/91.

89.6(7) Renumbered as 701—10.102(422), IAB 1/23/91.

701—89.7(422) Interest or refunds on net operating loss carrybacks.

89.7(1) Reserved.

89.7(2) *Interest on refunds and tax paid prior to due date.* For the purpose of determining the time interest begins to accrue, all income tax withheld, estimated tax paid and other tax paid prior to the due date shall be deemed to be paid on the last day the return is required to be filed disregarding any extensions of time to file the return and pay the tax.

89.7(3) *Interest on a net operating loss carryback—the second calendar month period—on or after April 30, 1981.* For net operating losses occurring in any of the taxable years ending on or after April 30, 1981, interest accrues on excess tax paid in a prior year, if the loss is carried back to such year, only after the close of the taxable year in which the loss occurs or on the first day of the second calendar month following the date the tax to be refunded was paid, whichever time is later.

This rule is intended to implement Iowa Code section 422.25.

701—89.8(422) Reportable income and deductions.

89.8(1) *Application of the Internal Revenue Code.* Iowa Code section 422.4(16) provides that taxable income of estates and trusts for Iowa income tax purposes is the same as taxable income for federal income tax purposes, subject to certain adjustments specified in Iowa Code sections 422.7 and 422.9. Therefore, the Internal Revenue Code is also Iowa law insofar as it relates to what constitutes gross income, allowable deductions and distributions, subject to the adjustments specified above. See *First National Bank of Ottumwa v. Bair,* 252 N.W.2d 723 (Iowa 1977).

For purposes of a distribution deduction under this chapter, an estate or trust shall receive a distribution deduction only for income taxable to Iowa. For example, municipal interest will be included in the distribution deduction because it is taxable to Iowa. U.S. government interest would not be included because it is not taxable to Iowa.

For tax years ending after August 5, 1997, if the trust is a qualified preneed funeral trust as set forth in Section 685 of the Internal Revenue Code and the trustee has elected the special tax treatment under Section 685 of the Internal Revenue Code, neither the trust nor the beneficiary is subject to Iowa income tax on income accruing to the trust.

89.8(2) *Authority of federal court cases, regulations and rulings.* The director has the responsibility to enforce and interpret the law relating to the taxes the department is obligated to administer, including those portions of the Internal Revenue Code which are Iowa law under Iowa Code section 422.4(16). Federal regulations may be interpreted by Iowa courts for state tax purposes. *In re Estate of Louden,* 249 Iowa 1393, 1396, 92 N.W.2d 409 (1958). However, the construction of statutes by a court of the

jurisdiction where the statute originated properly commands consideration and is highly persuasive. *Eddy v. Short,* 190 Iowa 1376, 1383, 179 N.W. 818 (1920), *In re Estate of Millard,* 251 Iowa 1282, 1292, 105 N.W.2d 95 (1960). Therefore, while federal court cases, regulations and rulings interpreting the Internal Revenue Code will be accorded every consideration, the department has the right to make its own interpretation of the Internal Revenue Code as to what constitutes taxable income for Iowa tax purposes, consistent with Iowa statutes and court decisions. Also see rule 701—41.2(422).

89.8(3) *Reportable income in general—Iowa estates and trusts.* Estates of Iowa resident decedents and trusts with a situs in Iowa must report all income received from sources within and without Iowa, regardless of whether the income is from real, personal, tangible or intangible property. See 89.8(11)*"b"* for the credit allowable against the Iowa tax for income tax paid to another state or country on income reported to Iowa for taxation.

89.8(4) *Reportable income in general—foreign situs estates and trusts.* Estates and trusts with a situs outside Iowa must report only that portion of income which is derived from Iowa sources. Examples of Iowa source income include, but are not limited to: income from real and tangible personal property with a situs in Iowa, such as a farm and from a business located in Iowa; the capital gain portion of an installment sale contract of Iowa situs property; and wages, salaries and other compensation for services performed in Iowa, but received after the death of the decedent.

Foreign situs estates and trusts must report income from intangible personal property, such as annuities, interest on bank deposits and dividends, but only to the extent the income is derived from a business, trade, profession or occupation carried on in Iowa.

89.8(5) *Income from property subject to the jurisdiction of the probate court.*

a. Probate property subject to possession by the personal representative. Income received on probate property after the decedent's death is chargeable to the estate or to the person succeeding to the decedent's property depending on whether the personal representative has the right to, or has taken possession of, the probate property producing the income. (Rev. Ruling 57-133, 1-CB 200 (1957).) If the personal representative has taken possession of or has the right to possession of a specific item of probate property, the income from this property is estate income, even though the personal representative is bound by law to distribute the income during the course of administration to a beneficiary. *Colthurst v. Colthurst,* 265 N.W.2d 590 (Iowa 1978); *In re Estate of Herring,* 265 N.W.2d 740 (Iowa 1978). The personal representative is charged with the income from this property for each taxable year until the property is distributed or otherwise disposed of. Iowa Code section 633.351 (probate code) specifies the personal representative shall take possession of the decedent's personal property, except exempt property, and also the decedent's real estate, except the homestead, if any one of the following conditions are met: if there is no distributee present and competent to take possession; if the real estate is subject to a lease; or if the distributee is present and competent and gives consent to possession. *Colthurst v. Colthurst,* 265 N.W.2d 590 (Iowa 1978); *In re Estate of Peterson,* 263 N.W.2d 555 (Iowa Ct. of Appeals 1977). In addition, Iowa Code section 633.386 (probate code) gives the personal representative authority to lease real estate (and therefore to take possession) in order to pay the debts and charges of the estate.

b. Income charged to the heir or beneficiary. Under Iowa law title to probate property, both real and personal, passes instantaneously on death to the heir or beneficiary. *In re Estate of Bliven,* 236 N.W.2d 366, 370 (Iowa 1975). If property is not subject to the personal representative's right of possession under Iowa Code section 633.351 (probate code) and the personal representative has not exercised the right to sell, lease, mortgage or pledge real and personal property to pay debts and charges under Iowa Code section 633.386 (probate code), the income from this probate property is not estate income. It is income to the person succeeding to the property.

89.8(6) *Income from nonprobate property.* Income from property not subject to the jurisdiction of the probate court is charged to the beneficiary or other person succeeding to the property. Examples of income from nonprobate property include, but are not limited to: property held in joint tenancy, annuity payments, pension and retirement plans not payable to the estate, and income from certain trusts created by the grantor-decedent. See *Wood, Admr., v. Logue,* 167 Iowa 436, 441, 149 N.W. 613 (1914) for joint tenancy property not being subject to the jurisdiction of the probate court; also *Lang v. Commissioner,* 289 U.S. 109, 77 L.Ed. 1066, 53 S.Ct. 535 (1933).

89.8(7) *Gross income of an estate.*

a. In general. 26 U.S.C. Section 641(b) provides that the taxable income of an estate or trust shall be computed in the same manner as the taxable income of an individual, except as modified in Subchapter J of the Internal Revenue Code. The gross income of an individual and, therefore, the gross income of an estate or trust, is not given a definitive meaning in 26 U.S.C. Section 641. Subrule 89.8(7), paragraphs *"d"* to *"q,"* describe the most common kinds of income of an estate or trust. However, those paragraphs are not intended to identify all types of taxable income.

b. Definition of the period of administration. The income charged to the decedent's estate is reportable by the personal representative for each taxable year during the period of the administration of the decedent's estate, if the minimum filing requirements are met. The period of administration for Iowa income tax purposes is determined by applying federal tax law to Iowa estates because Iowa taxable income is the same as federal taxable income, subject to the adjustments provided in Iowa Code sections 422.7 and 422.9. *Old Virginia Brick Co., Inc. v. Commissioner,* 367 F.2d 276 (4th CA 1966); *First National Bank of Ottumwa v. Bair,* 252 N.W.2d 723 (Iowa 1977). It is the period actually required by the personal representative to perform the ordinary duties of administration, such as the collection of assets and the payment of debts, taxes, legacies and bequests, whether the period required is longer or shorter than the period specified under the probate code. See federal regulations 1.641(b)-3(a). An estate will be considered terminated for income tax purposes when all of the assets have been distributed, except for a reasonable amount set aside in good faith for the payment of unascertained or contingent liabilities and expenses. The delay in closing the estate cannot be capricious. *Frederich v. Commissioner,* 147 F.2d 796 (5th CA 1944). If the period of administration is terminated for income tax purposes, the heir or beneficiary is charged with the income.

c. The estate's first return—special considerations. Death terminates the decedent's taxable year. Income received the day of the decedent's death is to be reported on the decedent's final individual return. See 26 U.S.C. 443(a)(2); federal regulation Section 1.443-1(a)(1).

The taxable year of a decedent's estate begins the day after the decedent's death. Income received after the decedent's death is either chargeable to the decedent's estate or to the person succeeding to the property producing the income. See 89.8(5)*"a"* and 89.8(5)*"b."* Income the decedent had a right to receive prior to death, but did not receive before death, is not the decedent's income, but is income in respect of a decedent and is chargeable either to the decedent's estate when received or to the person succeeding to the right to income. See 26 U.S.C. Section 691(a) and applicable federal regulations on what constitutes income in respect of a decedent. Trade or business expenses, interest, taxes and expenses for the production of income owing by the decedent at death, but unpaid, and the allowance for depletion on income not received at death, are not deductible on the decedent's final return. These are deductible by the estate or the person succeeding to the property when paid. Medical expenses incurred by the decedent, but unpaid at death, are not deductible by the estate. These are deductible on the decedent's individual return for the year the expenses were incurred, if paid within one year after the decedent's death and if the medical expense is not claimed as a deduction for federal estate tax purposes under 26 U.S.C. Section 2053. See 26 U.S.C. Section 213(d) and federal regulations thereunder relating to deductible medical expense of a decedent. Funeral expense is not a deductible item for income tax purposes, although it is a deductible expense for federal estate tax and Iowa inheritance tax purposes. See 701—paragraphs 86.6(1)*"g"* and 86.6(3)*"b."* Unused ordinary and capital losses remaining after the decedent's income tax liability for the year of death has been determined are not carried forward to the decedent's estate. The unused losses terminate with death, except to the extent they may be used by the decedent's surviving spouse. See Rev. Ruling 74-175, 1 CB 52 (1974). The estate of a decedent is a different taxpayer than the decedent.

d. Dividends. All income classified as dividends under 26 U.S.C. Section 61 and federal regulation section 1.61-9, received or constructually received, during the taxable year constitutes gross income to the estate or trust. However, some income labeled as dividends is for tax purposes classified as interest. For example, income from cooperative banks, credit unions, domestic building and loan associations, domestic savings and loan associations, federal savings and loan associations and mutual savings banks are considered interest and not dividends.

e. Interest. All interest received or constructually received during the taxable year, with the exception of interest, but not capital gain, from federal securities and from certain bonds issued by the state of Iowa and its political subdivisions listed in rule 701—40.3(422) is income to the estate or trust. Interest from securities issued by a state and its political subdivisions or from foreign securities is included in gross income for Iowa tax purposes, even though the interest may be exempt from federal income tax, except for those bonds listed in rule 701—40.3(422).

f. Partnerships and other estates and trusts. If a partnership in which the decedent had an interest is not terminated at death, the deceased partner's share of the partnership income is considered to be all received at the end of the partnership taxable year. As a result, none of the partnership income is chargeable to the deceased partner, unless the day of the partner's death coincides with the day the partnership year ends. It is chargeable to the deceased partner's estate or the person succeeding to the partner's interest, notwithstanding the fact the deceased partner may have withdrawn most or all of the deceased partner's share of the partnership income prior to death. Federal regulation section 1.706-1(C)(3)(ii); Rev. Ruling 68-215, 18 I.R.B. 14 (1968).

In general, if an estate or trust and its beneficiaries have different taxable years, the beneficiary is required to report the income from the estate or trust as if it were all paid on the last day of the taxable year of the estate or trust. Federal regulation section 1.662(C)-1. *Hay v. U.S.,* 263 F. Supp. 813 (D.C. Tex. 1967). However, if the beneficiary dies during the taxable year of an estate or trust, the taxable income of the beneficiary's estate includes only the portion of the income of the other estate or trust which was required to be distributed to the beneficiary, but was not in fact distributed to the beneficiary before death. The income that was in fact distributed by the other estate or trust prior to the beneficiary's death is properly included in the beneficiary's final income tax return. See federal regulation 1.662(C)-2.

g. Rents and royalties. Income received after death for the use or occupancy of the decedent's real and personal property is the income of the decedent's estate or the income of the person succeeding to the property. See 89.8(5)*"a"* and 89.8(5)*"b."* If the rental income was accrued, but unpaid at death, the accrued rent is income in respect of a decedent and is to be included as income, either by the estate or the person succeeding to the right to the income, in the taxable year when payment is received. Rent is not limited to payments in cash. It includes, but is not limited to, crop share rental payments when the decedent was a nonparticipating landlord. *Alvin R. Huldeen Estate v. Department of Revenue,* Sac County District Court, Probate No. 14,661 (1975). Income from the sale of grain and livestock in the estate of a participating landlord which was on hand at death is classified as income from a farm or business and not rental income.

Income from royalties would include, but is not limited to, payment for rights in books, plays, copyrights, trademarks, formulas, patents and from the exploitation of natural resources.

h. Farm and business income—in general. The death of the decedent does not alter the rules under which business and farm income is computed for income tax purposes. However, the decedent's estate as a new taxpayer may adopt a taxable year which is different from the decedent's taxable year. Also, the decedent's estate may adopt a different accounting method. The rules for determining a gain or loss from the sale or exchange of assets in the decedent's estate are the same as those for an individual. However, see 89.8(7)*"i"* and 89.8(7)*"j"* for the basis for gain or loss from the sale or exchange of property acquired from a decedent and 89.8(7)*"l"* for depreciation rules for property acquired from a decedent.

i. Basis for gain or loss—the stepped-up basis. Property acquired from a decedent receives a new basis for determining gain or loss when the property is sold or exchanged. This rule does not apply to property which is classified as income in respect of a decedent and certain other property designated in 26 U.S.C. Section 1014(b) and (c) and the federal regulations thereunder. The basis of property acquired from a decedent is either: (1) its fair market value at the time of death or the alternative value when it has been elected for federal estate tax purposes under 26 U.S.C. Section 2032, or (2) its special use value when the property has been valued for federal estate tax purposes under 26 U.S.C. Section 2032A. The decedent's basis in the property is not relevant.

If an estate files a federal estate tax return, then the basis is governed by the federal estate tax value determination. However, if an estate does not file a federal estate tax return, then Iowa inheritance tax valuation governs the basis for the property that is acquired.

EXAMPLE 1. Decedent A died July 1, 1995, owning a 160-acre Iowa farm which the decedent purchased in 1955 for $200 per acre, or $32,000. At the time of A's death, the farm had a fair market value of $2,000 per acre, or $320,000. In 1965, A and surviving spouse B purchased a residence for $35,000 in joint tenancy. Surviving spouse B, a school teacher, contributed one half of the purchase price of the residence; therefore, one-half of the residence is excluded from A's gross estate. At the time of A's death, the residence had a fair market value of $100,000. Surviving spouse B received the entire estate and did not elect the alternative or special use valuation.

B's basis for gain or loss in the farm and residence is computed as follows:

Asset	Fair Market Value at Death	New Basis for Gain or Loss	
160-acre farm	$320,000		$320,000
Residence	100,000	½ new basis	50,000
		½ old basis	17,500
			$ 67,500

Since the entire farm was acquired from A, its basis is 100 percent of the fair market value at death. Only one-half of the residence was acquired from A; therefore, only one half of the residence receives a new basis on A's death.

j. No new basis—income in respect of a decedent. Property or rights to income, classified as income in respect of a decedent under 26 U.S.C. Section 691, do not receive a new basis upon the decedent's death. It is a special exception to the stepped-up basis rule. See 26 U.S.C. Section 1014(c) and federal regulation section 1.1014-1(c).

Examples of income in respect of a decedent include, but are not limited to, the following:

1. Wages, salary or other compensation for personal services earned which are unpaid at death.
2. Interest accrued on obligations, such as bank accounts, certificates of deposit, bonds and promissory notes.
3. Accrued interest and unpaid capital gain on real and personal property installment contracts.
4. Federal income tax refunds, if claimed as a deduction on an Iowa income tax return.
5. Accounts receivable, if the decedent was on a cash accounting basis.
6. Crop share rent if the decedent was a nonparticipating landlord on a cash basis. This also includes growing crops, which are to be valued at the time of the decedent's death or alternate valuation date.

The basis for gain or loss for property classified as income in respect of a decedent is the decedent's basis in the property at the time of death.

k. Gain or loss—holding period. For the purpose of determining whether the sale or exchange of property is a long- or short-term gain or loss, the holding period of property acquired from a decedent begins the day after the decedent's death, regardless of how long the property was held by the decedent. See 26 U.S.C. Section 1.1223, federal regulation Section 1.1223-1(j). However, if the property acquired from a decedent is sold or otherwise disposed of within one year of the decedent's death, it will be considered to have been held over one year. In general, this is a sufficiently long holding period to qualify the sale or exchange as a long-term gain or loss transaction. However, a one-year holding period does not qualify horses and cattle held for draft, breeding or dairy purposes for long-term gain or loss treatment. A 24-month holding period is required by 26 U.S.C. Section 1231(b)(3) for the transaction to be considered long-term.

Therefore, if this kind of livestock is acquired from a decedent (which is usually the case) and is sold or exchanged within 24 months after the decedent's death, the sale is considered a short-term transaction. See Rev. Ruling 75-361, 2 C.B. 344 (1975). However, even if the sale or exchange results in a short-term gain or loss transaction, the property has a stepped-up basis, because it is acquired from a decedent. See 89.8(7)*"i."*

l. Depreciation—property acquired from a decedent. Property acquired from a decedent which is subject to the allowance for depreciation, receives the same value for depreciation purposes as its basis

for gain or loss in a sale or exchange, regardless of its basis or remaining useful life in the hands of the decedent. See 26 U.S.C. Sections 167(g) and 1011; federal regulation Section 1.167(g)-1. For the purpose of determining the life of an asset subject to the allowance for depreciation, the property is treated as if it were acquired the day after the decedent's death. See federal regulation Section 1.167(a)-10. The decedent's estate or other person acquiring depreciable property from the decedent may adopt a depreciation method different from that used by the decedent for the depreciable asset. See federal regulation section 1.167(a)-7.

m. Section 641(c) gain for sales or exchanges before August 6, 1997. The gain that is excluded from federal taxable income under 26 U.S.C. Section 641(c) for sales or exchanges before August 6, 1997, constitutes Iowa gross income to the estate or trust. This gain for sales or exchanges before August 6, 1997, is excluded from taxable income for federal purposes because it is subject to a special federal tax under 26 U.S.C. Section 644(a). This special federal tax was repealed for sales or exchanges occurring on or after August 6, 1997. The effect is to tax the gain for sales or exchanges before August 6, 1997, which receives separate treatment for federal income tax purposes, in the same manner as this gain was taxed prior to the enactment of the federal Tax Reform Act of 1976.

n. Nonrecognition of gain—installment sale contracts before October 20, 1980. No gain or loss is realized by the estate of a decedent-seller dying before October 20, 1980, when the purchaser in an installment sale contract inherits the seller's rights under the contract of sale. The merger of the asset with the liability is considered to be a nontaxable transfer. Therefore, any unreported gain from the installment sale contract is not subject to income tax when there is a merger of the asset with the liability. See Senate Finance Committee Report to P.L. 96-471.

o. Recognition of gain—installment sale contracts after October 19, 1980. Effective for estates of decedents dying after October 19, 1980, Section 3 of Public Law 96-471 (Installment Sales Revision Act of 1980) provides for the recognition of the remaining gain on installment sales contracts when the debtor inherits the obligation and thereby causes a merger of the asset with the liability. The rule after October 19, 1980, is if, as a result of the death of the holder of an installment sale obligation (usually the seller), the installment sale obligation is transferred to the debtor (usually the purchaser); or, if the installment sale obligation is canceled either as a result of the holder's death or by the personal representative of the holder's estate, the remaining gain from the installment sale contract not previously reported is recognized by the holder's estate, as if the remaining balance due had been immediately paid in full. The merger of the asset with the debt is treated as a taxable transfer by the estate of the holder (seller) of the obligation and is income in respect of a decedent realized by the holder's estate.

If the obligation was held by a person other than the seller, such as a trust, the cancellation of the obligation will be treated by that person as a taxable transfer immediately after the seller's death. In the absence of some act of canceling the obligation, such as by distribution or notation which results in cancellation under Iowa Code chapter 554 (Uniform Commercial Code), the disposition is considered to occur no later than the time the period of administration of the estate is ended. See Senate Committee Report to P.L. 96-471.

For gain recognition purposes, if the seller and the debtor were related parties, the value of the installment contract is considered to be not less than full face value, regardless of its value for Iowa inheritance tax or federal estate tax purposes. A related party includes, but is not limited to, the spouse, child (including an adopted child), grandchild, or parent of the seller; an estate in which the seller is a beneficiary; a partnership in which the seller is a partner; a corporation in which the seller owns 50 percent or more of the stock; and a trust where the seller is a beneficiary or is treated as the owner.

If the debtor inherits the obligation to pay or another share of the estate, the personal representative of the holder's estate must set off the contract of sale to the debtor when satisfying the debtor's share of the estate if the debtor's share of estate equals or exceeds the face value of the contract. In this case, the entire contract is canceled and all of the unreported gain is income in respect of a decedent to the estate. If the debtor's share of the estate is less than the face value of the contract of sale, the contract of sale is canceled only to the extent of the debtor's share of the estate and only a like percentage of the unreported gain is considered income in respect of a decedent received immediately by the estate. See

Iowa Code section 633.471 for the right of retainer and setoff. *In re Estate of Ferris,* 234 Iowa 960, 14 N.W.2d 889 (1944).

p. Nonresident aliens—sales of Iowa real estate. For sales and exchanges occurring after June 18, 1980, nonresident aliens and estates and trusts with a situs outside the United States must include the gain from the sale or exchange of Iowa real estate as taxable income, even though the real estate was not effectively connected with a trade or business carried on in the United States. See Public Law 96-499. Any gain paid or distributed to a nonresident alien or an estate or trust with a situs outside the United States is subject to Iowa income tax withholding, unless the gain has been previously accumulated and any tax due paid. See 89.4(9)*"d"* and 701—subrule 46.4(2), item "5," for the duty to withhold Iowa income tax from distributions to nonresident beneficiaries and individuals.

q. Miscellaneous income. Miscellaneous income is an inclusive term. It includes those items of income that are subject to Iowa income tax under Iowa Code section 422.6 which are not classified as dividends, interest, rent and royalties, income from partnerships and other fiduciaries, business or farm income and gain or loss from the sale or exchange of assets. Examples of miscellaneous income include, but are not limited to: wages and salaries earned by the decedent which are unpaid at death; federal income tax refunds, if the refund was deducted from an Iowa income tax return; and distributions to the estate from an employee's pension or retirement plan, if subject to Iowa income tax.

r. Grantor trusts. If the income of a trust is subject to the grantor trust rules under 26 U.S.C. Sections 671 to 679, the grantor of the trust or other person specified in the trust instrument, and not the trust, is considered the owner of the income. This income is properly reportable on the Iowa individual income tax return of the grantor or other individual treated as the owner. The fiduciary income tax return of a grantor trust is an informational return only. Items of income, deductions and credits of a grantor trust should be reported on a separate statement attached to the fiduciary return of income. See federal regulation Section 1.671-4. The taxable year of a grantor trust must be the same as the taxable year of the grantor, or of the other individual considered the owner of the income for tax purposes. *William Scheft,* 59 T.C. 428. Examples of grantor trusts are, but not limited to: trusts where the grantor or a nonadverse party has the power to revoke the trust or to return the corpus to the grantor; trusts where the grantor or a nonadverse party has the power to distribute income to or for the benefit of the grantor or the grantor's spouse; and trusts where the grantor has retained a reversionary interest in the trust, within specified time limits. See federal regulation Section 1.671-1.

s. "Equity trusts"—assignment of future wages and salaries. The assignment of future wages, salaries or other compensation for future services by a grantor to a trust (commonly called "equity" or "family estate" trust) does not shift the tax burden on this income from the grantor to the trust. The trust is subject to the grantor trust rules under 26 U.S.C. Sections 671 to 679. The income of the trust is to be reported by the grantor on an Iowa individual income tax return. *Lucas v. Earl,* 281 U.S. 111, 74 L.Ed. 731, 50 S.Ct. 241 (1930); *Vnuk v. Commissioner,* 621 F.2d 1318 (8th CA 1980); Revenue Ruling 75-257, 2 C.B. 251 (1975); *In re August Erling, Jr., et al.,* Director of Revenue decision, Docket No. 77-237-2C-A (1979).

t. Adjustments to federal taxable income. Iowa Code section 422.4(16) provides that the Iowa taxable income of estates and trusts is federal taxable income, without the deduction for the personal exemption, subject to the specific adjustments set forth in Iowa Code section 422.7 and the modifications relating to federal and state income tax specified in Iowa Code section 422.9. The modifications have these results:

1. Federal income tax on the income of Iowa situs estates and trusts is deductible for Iowa income tax purposes in the year paid or accrued depending on the method of accounting.

2. Federal income tax owed by Iowa resident decedents at the time of death is a deduction against estate income in the year paid.

3. The federal income tax deduction allowable for estates and trusts with a situs outside Iowa must be prorated on the basis the Iowa gross income subject to tax bears to the total gross income subject to federal income tax.

4. Federal income tax owed by a nonresident decedent at the time of death must be prorated on the basis the Iowa income included in the federal adjusted gross income bears to the total federal adjusted

gross income. See 701—subrule 41.3(4) for prorating the federal income tax deduction for nonresident individuals.

5. Iowa income tax paid by the estate is not a deduction in computing Iowa taxable income.

6. The federal exemption allowed to estates and trusts under 26 U.S.C. Section 642(b), that is, $600 for an estate, $300 for simple trust and $100 for a complex trust, is not deductible for Iowa income tax purposes.

7. Interest and dividends from federal securities, but not capital gain or loss, is exempt from Iowa income tax and, therefore, is not part of the Iowa taxable income of estates and trusts.

8. Interest and dividends from securities of a state and its political subdivisions and from foreign securities are included in Iowa taxable income in the year received, regardless of whether such interest and dividends are exempt from federal income tax. However, see 701—40.3(422) and 89.8(7)*"e"* for the exemption for certain bonds issued by the state of Iowa and its political subdivisions which are not included in Iowa taxable income.

9. See 89.8(7)*"m"* for the includability of the gain for sales or exchanges before August 6, 1997, excluded by 26 U.S.C. Section 641(c), in the Iowa taxable income of a trust.

10. See 701—paragraph 86.5(12)*"b"* for the inheritance tax exemption for the portion of an employee's pension or retirement plan subject to Iowa income tax.

89.8(8) *Deductions from gross income.*

a. In general. The deductions allowable in computing taxable income of estates and trusts are generally those relating to a trade or business and the expenses attributable to investment income. The important distinction between the deductions allowable in computing federal adjusted gross income and itemized deductions for individual income tax has only limited application in determining the taxable income of estates and trusts. Many deductions in computing the taxable income of an individual have no application to the deductions allowable in computing the taxable income of an estate or trust, due to the nature of estates and trusts and the sources of their income. For example, medical expense and moving expense deductions are applicable only to individuals, but taxes and interest expense can be incurred by both individuals and estates and trusts. Also the deduction for distribution to beneficiaries has no application to individual income tax.

b. Interest expense. Interest paid on obligations secured by property subject to the personal representative or trustee's right of possession is a deduction from gross income in the year paid. Interest on debts or charges which the personal representative or trustee is obligated to pay is also a deduction against gross income in the year paid. Interest on obligations secured by property, not subject to the personal representative's right of possession, is not deductible from the gross income of the estate, but is a deduction for the person succeeding to the encumbered property. No distinction is made between business and nonbusiness interest. See Iowa Code section 633.278 (probate code) for circumstances when the personal representative of the decedent's estate is required to pay the debt and interest on encumbered property, even though the property is not subject to the personal representative's right of possession. *J.S. Dean,* 35 T.C. 1083 (1961); Revenue Ruling 57-481, 2 C.B. 48 (1957).

c. Taxes. The taxes deductible against the gross income of an estate or trust are limited to the taxes deductible for individual income tax purposes under 26 U.S.C. Section 164, subject to the adjustments specified in Iowa Code section 422.9 relating to federal and state income taxes. Real estate and personal property taxes, including the taxes due, but unpaid at death, are only deductible by the estate on the decedent's property which is subject to the personal representative's right of possession. Federal income tax on the income of an estate or trust and federal income tax owing by an Iowa decedent at the time of death, including the federal income tax owing on the decedent's final return for the year of death, are deductible by the estate or trust in the year paid. The federal income tax liability of a nonresident decedent must be prorated for tax years on or before December 31, 1981. For tax years on or after January 1, 1982, the federal income tax deduction attributable to Iowa by nonresidents of Iowa shall be the same deduction as is available for resident taxpayers. See 701—subrule 41.3(4) and Iowa Code section 422.5(1)*"j."* Examples of taxes not deductible include, but are not limited to: federal estate tax (except federal estate tax paid on income in respect of a decedent); Iowa income and inheritance tax; federal gift taxes; and special assessments increasing the value of property. See 26 U.S.C. Section 275.

See 89.8(7)*"t"* for the proration of federal income tax for foreign situs estates and trusts. In addition, foreign situs estates and trusts are not allowed a deduction from Iowa gross income for real and personal property taxes paid on property located outside Iowa.

d. Depreciation and depletion—allocation. If the personal representative of a decedent's estate has the right to the possession of property eligible for the depreciation allowance, the depreciation is a deduction from the estate's gross income when the income for the taxable year is accumulated by the estate. If all or part of the income for the year is distributed to the beneficiaries, the deduction for depreciation is apportioned between the estate and the beneficiaries on the basis of the income allocated to each. In the case of an estate, the deduction for depreciation follows the income.

The same depreciation rules apply to simple and complex trusts, with the exception that if the trustee has the right to maintain a reserve for depreciation, and in fact does so, the deduction for depreciation is allocated to the trust to the extent of the reserve maintained, regardless of whether the income is accumulated or distributed. See 26 U.S.C. Section 167, federal regulation 1.167 H-1(b); Revenue Ruling 74-530, 2 C.B. 188 (1974).

The rules governing the allowance for depreciation are also the rules to be applied to the allowance for depletion under 26 U.S.C. Section 611.

e. The charitable deduction. The charitable deduction allowed estates and trusts under 26 U.S.C. Section 642(c) is not subject to the percentage of income limitation applicable to individual taxpayers under 26 U.S.C. Section 170(b). The allowable deduction is governed by the terms of the will or trust instrument, which can provide for unlimited payments for charitable purposes. However, an unused charitable contribution carryover of the decedent remaining after the decedent's individual income tax liability for the year of death is determined is not available to the estate. The unused carryover terminates at death, except to the extent it may be used by the surviving spouse. See federal regulation Section 1.170A-10(d)(4)(iii). The deduction is limited to payments of gross income or amounts permanently set aside for charitable uses. A simple pecuniary bequest to charity in the decedent's will does not qualify for the charitable deduction from the estate's income. It is a payment from the corpus of the estate. *Frank Trust of 1931,* 145 F.2d 411 (3rd CA 1949). However, the pecuniary bequest to charity is exempt from the Iowa inheritance tax under Iowa Code section 450.4 if it meets the exemption requirements.

f. Other deductions. The category of other deductions includes those deductions allowable in computing taxable income not receiving special itemized treatment on the Iowa fiduciary return of income. The most common kind of other deductions is the expense of administration of an estate or trust paid during the taxable year. Expenses of administration include, but are not limited to: a reasonable fee and the necessary expenses of the attorney employed by the personal representative of an estate or the trustee of a trust; a reasonable fee and the necessary expenses of the personal representative of an estate or the trustee of a trust; accounting fees; court costs; and interest paid on federal estate tax during an extension of time to pay. However, administration expenses are subject to the no double deduction rule. See 26 U.S.C. Section 642(g) and 89.8(8)*"g."* Salaries or fees paid during the taxable year for the management of a farm or business are expenses directly attributable to the production of a specific kind of income and are more properly deductible on the farm schedule F or the business schedule C.

g. The no double deduction rule. Expenses of administration, certain debts of the decedent like medical expenses incurred prior to death and losses during the period of administration are proper deductions in computing both the taxable income of an estate or trust (or on the decedent's individual return in case of medical expenses) and the taxable estate for federal estate tax purposes under 26 U.S.C. Sections 2053 and 2054. The no double deduction rule only applies to trusts when the trust assets are included for federal estate tax purposes. 26 U.S.C. Section 642(g) prohibits the double deduction of those items which qualify as deductions for both taxes. To prevent the double deduction, it is a prerequisite for the allowance of the deduction for income tax purposes that a statement be filed with the fiduciary return of income waiving the right to claim the item or portion of the item as a deduction on the federal estate tax return. The waiver once filed with the fiduciary return of income is irrevocable. However, unless the waiver has been filed, the decision to claim the deduction or portion of the deduction on the federal estate tax return can be changed anytime prior to the time the item or portion of the item is finally allowed for federal estate tax purposes.

The waiver requirement has no application to estates and trusts not required to file a federal estate tax return.

The no double deduction rule has no application to deductions in respect of a decedent, such as deductions relating to trade or business expenses, interest, taxes, expenses for the production of income and the allowance for depletion, which are deductible both for income tax purposes and federal estate tax purposes. See 26 U.S.C. Section 691(b) and federal regulations Section 1.691(b)-1 for what constitutes deductions in respect of a decedent.

The no double deduction rule does not apply to the deduction of an item for Iowa inheritance tax purposes. Items are deductible or not in computing the taxable shares for Iowa inheritance tax purposes by reference alone to Iowa Code chapter 450.

Assuming an item is otherwise deductible for income and inheritance tax purposes, the no double deduction rule has the following applications for Iowa income and inheritance tax:

1. For estates and trusts not required to file a federal estate tax return, an item is deductible for both Iowa inheritance tax and Iowa income tax purposes.

2. Estates and trusts required to file a federal estate tax return can always claim the item as a deduction on the Iowa inheritance tax return. In addition, the same item or portion of the item is a deduction for Iowa income tax purposes if the item or portion of the item is not claimed as a deduction on the federal estate tax return. If it is claimed as a deduction on the federal estate tax return, it is not deductible for income tax purposes.

This rule applies both to estates and trusts with a situs within and without Iowa.

h. The net operating loss deduction. Subject to the modifications specified in federal regulation Section 1.642(d)-1, an estate or trust is allowed a deduction for net operating loss which is computed in the same manner as the net operating loss deduction allowable to individual taxpayers. The modification especially applicable to estates and trusts is: The the charitable deduction allowable under 26 U.S.C. Section 642(C) is disregarded. See federal regulation Section 1.642(d)-1.

The rule that nonbusiness deductions are only taken into account to the extent of nonbusiness income applies equally to estates and trusts and individual taxpayers. Attorney fees and the fees of the trustee or personal representative, without a showing that these administrative expenses were incurred in carrying on the decedent's or grantor's trade or business, are a nonbusiness deduction. *Refling v. Commissioner,* 47 F.2d 895 (8th CA 1930). Therefore, any excess fees over income are not available for a carryback to a prior taxable year or a carryforward to a future taxable year. *Mary C. Westphal,* 37 T.C. 340 (1961). However, see 89.8(9)*"a"* for the special rule on excess deductions in the year the estate or trust terminates. Net operating losses are available to the estate or trust and can be carried back for distribution to a beneficiary, with the exception that any unused loss must be distributed to the beneficiaries in the year the estate or trust terminates.

Estates and trusts with a situs outside Iowa are allowed a deduction only for a net operating loss attributable to a trade or business activity carried on in the state of Iowa. In the event the trade or business activity giving rise to the loss is carried on both in Iowa and another state, the net operating loss deduction for Iowa income tax purposes must be prorated on the ratio of the Iowa gross receipts from the trade or business to the total gross receipts from the trade or business. See 701—subrule 40.18(2) for the computation of the net operating loss deduction of a nonresident decedent.

i. Capital loss deduction. The capital loss deduction of an estate or trust is computed in the same manner as the capital loss deduction for individual taxpayers. However, it is a deduction only for the estate or trust and is not distributable to a beneficiary, except in the year the estate or trust terminates. *Grey v. Commissioner,* 118 F.2d 153, 141 ALR 1113 (7th CA 1941); *Jones v. Whittington,* 194 F.2d 812 (10th CA 1952). Capital losses do not enter into the computation of the deduction for income required to be distributed currently to beneficiaries. During the period of administration of the estate or trust, capital losses can be used only to offset capital gain for simple trusts required to distribute income currently. However, beneficiaries may derive immediate benefit from capital losses when capital gain is required or permitted to be distributed to beneficiaries prior to closure of the estate or trust, since the losses can be used to offset gain before distribution.

j. The distribution deduction. Estates and trusts are allowed to deduct the amounts of income required to be distributed currently and also other amounts properly paid, credited or required to be distributed to the extent of the distributable net income for the year. For income tax purposes, an estate of a decedent is treated as a complex trust, because normally the personal representative of an estate has the discretion whether or not to distribute current income. Therefore, most distributions of income from a decedent's estate fall under the category of "other amounts properly paid, credited or required to be distributed." However, see *Colthurst v. Colthurst,* 265 N.W.2d 590 (Iowa 1978) for circumstances when the personal representative of an estate is required to distribute current income during the period of administration to a life tenant (the surviving spouse in this case).

The distribution deduction allowed is limited to the distributable net income of the estate or trust for the taxable year. If amounts in excess of distributable net income are distributed to a beneficiary of a decedent's estate, the excess does not constitute taxable income to the beneficiary. Distributions made to a beneficiary of a complex trust in excess of the distributable net income for the taxable year may or may not be includable in the beneficiary's taxable income depending on whether the excess distribution is governed by the throwback distribution rules under 26 U.S.C. Sections 665 through 668.

Estates and trusts with tax years beginning on or after August 5, 1997, may elect to treat distributions made within 65 days of the end of the tax year as having been made in the tax year of the estate or trust. If amounts in excess of distributable net income are distributed to a beneficiary of a decedent's estate, the excess does not constitute taxable income to the beneficiary. Distributions made to a beneficiary of a complex trust in excess of the distributable net income for the taxable year may or may not be includable in the beneficiary's taxable income depending on whether the excess distribution is governed by the throwback distribution rules under 26 U.S.C. Sections 665 through 668. Effective for distributions made by domestic trusts in tax years beginning after August 5, 1997, there is a repeal of the throwback rules found in 26 U.S.C. Sections 665 through 668. However, the repeal of the throwback rules does not apply to trusts created before March 1, 1984, foreign trusts, or domestic trusts that were once treated as foreign trusts, except as provided by federal regulations.

Income distributed to a beneficiary of an estate or trust retains the same character in the hands of the beneficiary as it had in the estate or trust, with the exception of unused capital loss distributed on closure to a corporation, in which case the loss is treated as a short-term loss, regardless of its character in the estate or trust. See federal regulation Section 1.642(h)-1(g). In addition, unless the will or trust instrument specifically provides otherwise, a distribution to beneficiaries is considered to be a proportionate distribution of the different kinds of income composing the distributable net income of the estate or trust. See 26 U.S.C. Section 662.2(b) and federal regulation Section 1.662(b)-1. The same character and proportionate distribution rule is illustrated by the following:

EXAMPLE:

Decedent A, a resident of Iowa, died February 15, 1997. Under the terms of the will, all the decedent's property was devised in equal shares to beneficiary B, a resident of Phoenix, Arizona, and beneficiary C, a resident of Cedar Rapids, Iowa. The estate adopted a calendar year as its taxable year. For calendar year 1997, the estate had distributable net income of $50,000, which is composed of:

Interest income	$10,000
Dividend income	5,000
Net Iowa farm income	35,000
Total	$50,000

On December 20, 1997, the estate distributed $12,500 to beneficiary B, and $12,500 to beneficiary C. Beneficiaries B and C have received a distribution for 1997 as follows:

Beneficiary B		Beneficiary C	
Interest income	$2,500	Interest income	$2,500
Dividends	1,250	Dividends	1,250
Farm income	8,750	Farm income	8,750
Total	$12,500	Total	$12,500

The estate is entitled to a deduction of $25,000 against gross income in 1997 for the distribution to beneficiaries B and C and owes Iowa income tax on the $25,000 income retained in the estate. Since the interest income of the estate is 20 percent of the distributable net income, 20 percent of the distribution to beneficiaries B and C is considered interest income. Likewise, 10 percent of the estate's distributable net income is dividends and 70 percent farm income. The distribution to B and C consists of a corresponding percentage of dividends and farm income. Beneficiary C, a resident of Iowa, must report the entire distribution of $12,500 on a 1997 Iowa individual income tax return. Beneficiary B, a resident of Arizona, is only required to report the farm income portion of the distribution ($8,750) on a 1997 nonresident individual income tax return, because dividends and interest are income from intangible personal property and were not derived from a business, trade, profession or occupation carried on within Iowa by the nonresident. See 701—subrule 40.16(5).

k. The dividend exclusion. Estates and trusts are eligible for the dividend exclusion allowed individual taxpayers under 26 U.S.C. Section 116 (the Iowa exclusion is $100 for 1981). The exclusion is allocated to the estate or trust if the dividend income for the taxable year is accumulated. The dividend exclusion is allocated to the beneficiaries when all of the distributable net income for the taxable year is distributed. The distribution must not be diminished by the exclusion. The dividend exclusion is then available to the beneficiaries after the dividends distributed are added to any other dividends received by the beneficiaries during the taxable year. If there is only a partial distribution of the distributable net income of the estate or trust for the taxable year, the dividend exclusion must be prorated between the beneficiaries and the estate or trust on the basis of the percentage of the distributable net income accumulated by the estate or trust and the percentage distributed to the beneficiaries. A partial distribution of the dividends and exclusion is to be reported and used by the beneficiaries for income tax purposes in the same manner as the full distribution of dividends. See federal regulation Sections 1.116-1(a) and 1.661(c)-1.

l. The capital gains deduction. 26 U.S.C. Section 1202(b) provides that an estate or trust is allowed a deduction for net capital gain received during the taxable year. Except for the requirement of allocation between the beneficiaries and the estate or trust, the deduction is computed in the same manner as the net capital gain deduction allowed individuals. See federal regulation Section 1.1202-1 (b). If the net capital gain is allocated to corpus, the estate or trust is entitled to the deduction. If the will or trust instrument requires capital gain to be distributed to the beneficiaries or if the trustee or personal representative of a decedent's estate is authorized to allocate capital gain to income and distributes the capital gain, then the net capital gain deduction is allocated to the beneficiaries and is not a deduction to the estate or trust. The gain distributed must not be diminished by the deduction. It must first be combined with any other capital gains and losses of the beneficiary prior to determining whether the net capital gain deduction is applicable for the beneficiary's taxable year.

If the net capital gain for the taxable year is partially allocated to corpus and partially distributed, then the net capital gain deduction is available to the beneficiaries only on the gain distributed and to the estate or trust only on the gain accumulated. A partial distribution of capital gain is treated for purposes of a beneficiary's income tax liability in the same manner as a full distribution of capital gain.

m. The Iowa throwback rule. Iowa Code section 422.6 allows a trust beneficiary receiving an accumulation distribution subject to the throwback rules under 26 U.S.C. Sections 665 through 668 a credit against the beneficiary's income tax liability for the Iowa income tax paid by the trust on the accumulated income distributed. The Iowa income tax paid by the trust on the accumulated income distributed is deemed distributed to the trust beneficiary, without interest, and is a credit for the year of distribution against the portion of the Iowa income tax liability of the beneficiary which is attributable to

the accumulated distribution. The accumulated distribution must be adjusted by the beneficiary to reflect income subject to Iowa income tax. No refund is allowed the trust for the Iowa income tax deemed distributed to the beneficiary. The beneficiary is not allowed a refund if the tax distributed is in excess of the income tax liability attributable to the distribution. Effective for distributions made by domestic trusts in tax years beginning after August 5, 1997, there is a repeal of the throwback rules found in 26 U.S.C. Sections 665 through 668. However, the repeal of the throwback rules does not apply to trusts created before March 1, 1984, foreign trusts, or domestic trusts that were once treated as foreign trusts, except as provided by federal regulations.

n. Federal estate tax paid on income in respect of a decedent. For Iowa income tax purposes, Iowa Code section 422.7 makes no provision for adjusting the deduction for federal estate tax paid when the income in respect of a decedent includes interest from federal securities. Therefore, the federal estate tax paid on interest from federal securities, which is classified as income in respect of a decedent under 26 U.S.C. Section 691(a), is a deduction for Iowa income tax purposes in the taxable year the interest is received. However, interest and dividends from securities of a state or political subdivision, which are exempt from federal income tax, do not constitute the kind of income in respect of a decedent on which the deduction is computed. Since the deduction under 26 U.S.C. Section 691(c) does not apply to income exempt from federal income tax, there is no deduction on the Iowa return for the federal estate tax paid on the exempt interest, even though under Iowa Code section 422.7 this interest is subject to Iowa income tax.

The deduction allowable in any taxable year is limited to a percentage of the total federal estate tax deduction which is determined by the ratio of income in respect of a decedent received for the year to the total amount of the net income in respect of a decedent on which federal estate tax was paid. See 26 U.S.C. Section 691(c) and federal regulation Section 1.691(c)-1 for the computation of the deduction. Estates and trusts with a situs outside Iowa are allowed a deduction only for federal estate tax paid on income in respect of a decedent from Iowa sources.

89.8(9) *The final return—special considerations.*

a. General rule. In the year of closure all income received by the estate or trust is considered "other amounts properly paid or credited or required to be distributed" and must be distributed to the beneficiaries according to the terms of the governing instrument. Rev. Ruling 58-423, 2 C.B. 151 (1958). Dividends and capital gains received during the year of closure must be distributed without being diminished by the net capital gain deduction or by the dividend exclusion. See federal regulation Section 1.643(a)-3(d). 26 U.S.C. Section 642(h) provides for an exception to the general rule that net operating and capital losses are only available to the taxpayer incurring the loss. Therefore, in the year of closure, any capital loss and net operating loss carryover that remains unused by the estate or trust is passed through the estate or trust and is allowed as a deduction to the beneficiaries succeeding to the property and may be applied by carrying back the losses, but such losses cannot be carried forward. See federal regulation Section 1.642(h)-1.

If the estate or trust in the year of termination has incurred deductions in excess of gross income which do not qualify for treatment as a net operating or capital loss, such as administration expenses, the excess deductions are passed through the estate or trust and are available to the beneficiaries succeeding to the property. They are available only for the year the estate or trust terminates and only as an itemized deduction in the case of an individual beneficiary. See Revenue Ruling 58-191 1 C.B. 149 (1958). Excess deductions also include any unused net operating loss carryover, if the year the estate or trust terminates is the last carryforward year for the net operating loss. See federal regulation Section 1-642(h)-2(b).

b. Exception to the general rule. If in the year of termination an Iowa ancillary estate makes the required distribution of its income to the primary estate which is not being terminated, instead of to the beneficiaries of the estate, it is proper in the year of closure to treat the income as if it were accumulated by the Iowa ancillary estate. Permitting Iowa income tax to be paid on the income in this special case, in effect, allows the distribution to the primary estate to be made on a tax-paid basis. This exception to the general rule relieves the primary estate from the obligation of filing a second fiduciary return, which it would be required to do except for this special rule.

89.8(10) *Computation of the tax due.*

a. In general. The tax due on the taxable income of an estate or trust is computed by using the same tax rate schedule used for computing the individual income tax liability. The provisions of the Iowa Code relating to the maximum net income of an individual before a tax liability is incurred have no application to the tax liability of an estate or trust. The taxable income of a short taxable year is not required to be annualized for the purpose of computing the tax liability. The tax due cannot be paid in installments. It must be paid in full within the time prescribed by law.

b. Alternative minimum tax. Special rules for estates and trusts. The sum of the items of tax preference determined under 26 U.S.C. Section 57 shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each under the provisions of federal income tax regulation Section 1.58-3. The minimum taxable income exemption of $17,500 allowable to an estate or trust shall be reduced to an amount which bears the same ratio to $17,500 that the sum of the items of tax preference apportioned to the estate or trust bears to the full sum of the items of tax preference before apportionment. See federal income tax regulation Section 1.58-1(d). See rule 701—39.6(422) for the computation of the Iowa alternative minimum tax.

89.8(11) *Credits against the tax.*

a. The personal exemption credit. The estate of a decedent and a trust, whether simple or complex, are allowed the same credit against the tax as the credit allowed an individual taxpayer, that is currently $40. The personal exemption credit is not prorated for short taxable years. The federal exemption allowed estates and trusts under 26 U.S.C. Section 642(b), in lieu of the personal exemption for individuals, has no application to Iowa income tax.

b. Credit for tax paid to another state or foreign country. Iowa Code section 422.8 grants Iowa situs trusts and estates of Iowa resident decedents, which have income derived from sources in another state or foreign country, a credit against the Iowa tax for the income tax paid to the state or foreign country where the income was derived. To be eligible for the credit, the income must have been includable for income tax purposes both in Iowa and the other state or foreign country. The credit allowable against the Iowa tax is limited to the lesser of: (1) the tax paid to the other state or foreign country on the income, or (2) the Iowa income tax paid on the foreign source income. The Iowa income tax paid on the foreign source income is computed by multiplying the Iowa computed tax, less the personal exemption credit, by a fraction of which the foreign source income included in the Iowa gross income is the numerator and the total Iowa gross income is the denominator. The resulting amount is the Iowa tax paid on foreign source income. Any tax paid to another state or foreign country in excess of the Iowa credit allowable is not refundable. Foreign situs trusts and estates of foreign decedents are not allowed a credit against the Iowa tax for the income tax paid another state or foreign country on Iowa source income. This rule is illustrated by the following example:

Decedent A died a resident of Webster City, Iowa, on February 15, 1997. A at the time of death owned income-producing property both in Iowa and the state of Missouri. For the short taxable year ending December 31, 1997, A's estate had the following income and expenses:

Interest	$ 5,000
Dividends	7,500
Iowa farm income	20,000
Missouri farm income	10,000
Iowa gross income	$ 42,500
Less allowable deductions	8,000
Iowa taxable income	$ 34,500
Iowa computed tax	$2,587.87
Less personal credit	40.00

Tax subject to credit for foreign taxes paid	$2,547.87
Less credit for tax paid Missouri	413.00
Iowa tax due	$2,134.87

A's estate paid $413.00 income tax to the state of Missouri on the $10,000 Missouri farm income. The Iowa tax on the foreign source income is $604.20 computed as follows:

$$\frac{\text{Foreign income included in gross income \$10,000}}{\text{Total Iowa gross income \$42,500}} \times \text{\$2,547.87*} = \text{\$604.20}$$

*$2,547.87 is the Iowa computed tax less the $40.00 personal credit.

The allowable credit for taxes paid the state of Missouri is $413.00, because it is less than the Iowa tax paid on the Missouri income. If the Missouri tax paid had been greater than the Iowa tax on the Missouri income, the allowable credit would have been the Iowa tax on the Missouri income.

See 701—subrule 42.4(3) for the computation of the credit allowed Iowa resident individuals for income tax paid to another state or foreign country.

c. *Motor vehicle fuel tax credit.* An estate or trust incurring Iowa motor vehicle fuel tax expense attributable to nonhighway uses may, in lieu of obtaining an Iowa motor vehicle fuel refund, claim as a credit against its Iowa income tax liability, the Iowa motor vehicle fuel taxes paid during the taxable year.

A copy of the Iowa motor vehicle fuel tax credit Form IA 4136 must be submitted with the fiduciary return of income to substantiate the claim for credit. Any credit in excess of the income tax due shall be refunded to the estate or trust, subject to the right of offset against other state taxes owing.

This rule is intended to implement Iowa Code sections 422.3 to 422.9, 422.12, 422.14, 422.23, 633.471 and chapter 452A.

701—89.9(422) Audits, assessments and refunds. Rules 701—43.1(422) to 43.3(422) governing the audit of individual income tax returns, the assessment for tax or additional tax due, and the refund of excessive tax paid shall also govern the audit of the fiduciary income tax return and the assessment and refund of fiduciary income tax.

This rule is intended to implement Iowa Code sections 422.16, 422.25, 422.30, 422.70 and 422.73.

701—89.10(422) The income tax certificate of acquittance.

89.10(1) *In general.* Iowa Code section 422.27 requires the income tax obligation of an estate or trust to be paid prior to approval of the final report by the court. Iowa Code section 422.27 refers only to the report of the executor, administrator or trustee. In addition, the statute makes reference only to a trustee's final report that is approved by a court. A trust that does not report to and is not subject to the supervision of a court is not required to obtain a certificate of acquittance. However, the statute's reference to a trustee who must report to the court would also include, but is not limited to, a referee in partition and the trustee of the estate of an individual bankrupt under Chapter 7 or 11 of Title 11 of the United States Code. What constitutes a trust is a matter of the trust law of the state of situs.

89.10(2) *The application for certificate of acquittance.* The final fiduciary return of income serves as an application for an income tax certificate of acquittance. For a certificate of acquittance to be received, the appropriate box on the final fiduciary return must be checked to request the certificate.

89.10(3) *Requirements for a certificate of acquittance.* The issuance of an income tax certificate of acquittance is dependent upon full payment of the income tax liability of the estate or trust for the period of administration. This includes the obligation to withhold income tax on distributions to nonresident beneficiaries. In the case of an estate, the income tax liability of the decedent for both prior years and the year of death must be paid to the extent of the probate property subject to the jurisdiction of the court. The probate property must be applied to the payment of the decedent's income tax liability according to the order of payment of an estate's debts and charges specified in Iowa Code section 633.425. If the probate property of the estate is insufficient to pay the decedent's income tax obligation in full, the

department, in lieu of a certificate of acquittance, shall issue a certificate stating that the probate property is insufficient to pay the decedent's income tax liability and that the department does not object to the closure of the estate. In the event the decedent's income tax obligation is not paid in full, the closure of the decedent's estate does not release any other person who is liable to pay the decedent's income tax obligation.

89.10(4) *The extent of the certificate.* An income tax certificate of acquittance is a statement of the department certifying that all income taxes due from the estate or trust have been paid in full to the extent of the income and deductions reported to the department. The certificate fulfills the statutory requirements of Iowa Code section 422.27 and the Iowa income tax portion of the requirements of Iowa Code sections 633.477 and 633.479. Providing all other closure requirements are met, the certificate permits the closure of the estate or trust by the court. However, the certificate of acquittance is not a release of liability for any income tax or additional tax that may become due, such as the result of an audit by the Internal Revenue Service or because of additional income not reported. See 701—subrule 38.2(1) for the limitations on the period of time to conduct income tax audits.

89.10(5) *No income tax certificate of acquittance required—exception to general rule.* If all of the property included in the estate is held in joint tenancy with rights of survivorship by a husband and wife as the only joint tenants, then in this case the provisions of Iowa Code section 422.27, subsection 1, do not apply and an income tax certificate of acquittance from the department is not required.

This rule is intended to implement Iowa Code sections 422.27, 633.425, 633.477 and 633.479.

701—89.11(422) Appeals to the director. An estate or trust has the right to appeal to the director for a revision of an assessment for additional tax due, the denial or reduction of a claim for refund, the denial of a request for a waiver of a penalty and the denial of a request for an income tax certificate of acquittance. The beneficiary of an estate or trust has the right to appeal a determination of the correct amount of income distributed and a determination of the correct allocation of deductions, credits, losses and expenses between the estate or trust and the beneficiary. The personal representative of an estate and the trustee of a trust have the right to appeal a determination of personal liability for income taxes required to be paid or withheld and for a penalty personally assessed. An appeal to the director must be in writing and must be made within 60 days of the notice of assessment and the other matters which are subject to appeal or for assessments issued on or after January 1, 1995, if the beneficiary of an estate or trust, the personal representative of an estate, or the trustee of a trust fails to timely appeal a notice of assessment, the person may pay the entire assessment and file a refund claim within the period provided by law for filing such claims. 701—Chapter 7 shall govern appeals to the director. See specifically rules 701—7.41(17A) to 7.54(17A) governing taxpayer protests.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 421.60 and 422.28.

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CHAPTER 90
Reserved

TITLE XII
MARIJUANA AND CONTROLLED SUBSTANCES STAMP TAX

CHAPTER 91
ADMINISTRATION OF MARIJUANA AND CONTROLLED SUBSTANCES STAMP TAX

701—91.1(453B) Marijuana and controlled substances stamp tax. Iowa Code chapter 453B imposes a tax on "dealers" who possess, distribute, or offer to sell "taxable substances" as defined therein. The taxes imposed by Iowa Code chapter 453B are due and payable immediately upon manufacture, production, acquisition, purchase, or possession by a dealer. Payment of the tax is evidenced by a stamp, label, or other official indicia permanently affixed to the taxable substance.

701—91.2(453B) Sales of stamps. The director or the director's authorized representative shall offer for sale to members of the public, during normal business hours, stamps which are capable of being affixed to taxable substances. The stamps shall be sold at the Hoover State Office Building, fourth floor, Des Moines, Iowa, and at other locations as may be designated by the director.

The director shall offer for sale three different stamps: (1) a stamp for a substance consisting of or containing marijuana, (2) a stamp for taxable substances other than marijuana which are sold by weight, and (3) a stamp for taxable substances other than marijuana which are not sold by weight. Each package or container which contains a taxable substance must have a stamp affixed to it. The stamps will be issued in denominations requested by the purchaser so long as the minimum purchase price for a single stamp purchase transaction is $215 or more. In addition, the denomination of individual stamps cannot be less than the price for ten dosage units, multiples of ten dosage units, one whole gram, or multiples of one gram even if the stamp will be affixed to a package containing less than ten dosage units or multiples thereof, or only a portion of one gram or multiples thereof.

The director will accept payment for stamps in the form of cash, cashier's check, or money order. Payment may not be made by personal check.

The stamps are valid for a period of six months from the date of issuance and the stamps shall contain a statement that the stamps expire after six months from the date of issue. A stamp is "unused" and expires if it has not been affixed to taxable substances within six months of the date of issue.

Stamps may be purchased in person or by mail. Persons (including dealers) purchasing stamps are not required to provide identification such as their name or address when purchasing stamps. Neither the director nor any employee of the department shall reveal any information obtained from a stamp purchaser, nor shall information obtained from a stamp purchaser in the course of purchasing stamps be used against the stamp purchaser in any criminal proceeding, unless the information is independently obtained, except in connection with a proceeding involving taxes due under this chapter from the stamp purchaser against whom a tax was assessed.

701—91.3(453B) Refunds pertaining to unused stamps. At any time up to 30 days after the expiration date as indicated on the stamp, any unused stamp may be returned to the department and a refund requested in accordance with Iowa Code section 422.73(2) and rules promulgated thereunder.

Refund information is confidential. Persons seeking a refund for an unused stamp must provide a name in which a refund can be made. However, neither the director nor any employee of the department shall reveal any information obtained from a refund claimant; nor shall information obtained from a refund claimant in the course of a refund claim for an unused stamp be used against the refund claimant in any criminal proceeding, unless the information is independently obtained, except in connection with a proceeding involving taxes under this chapter from the refund claimant against whom a tax was assessed or involving a counterfeit taxable substance tax stamp. If granted, the refund in the form of a warrant may, at the request of the refund claimant, either be picked up in person from the department at the

Hoover State Office Building, Des Moines, Iowa, or sent by mail to an address designated by the refund claimant.

These rules are intended to implement Iowa Code chapter 453B.

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CHAPTERS 92 to 96
Reserved

CHAPTER 103
STATE-IMPOSED AND LOCALLY IMPOSED HOTEL AND MOTEL TAXES—ADMINISTRATION

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

701—103.1(423A) Definitions, administration, and imposition.

103.1(1) Definitions. For the purposes of this chapter and 701—Chapters 104 and 105, unless the context otherwise requires:

"Department" means the department of revenue.

"Director" means the director of the department of revenue.

"Lessor" means any person engaged in the business of renting lodging to users. "Lessor" is synonymous with the word "retailer."

"Locally imposed tax" means the hotel and motel tax levied by Iowa Code section 423A.4.

"Lodging" means rooms, apartments, or sleeping quarters in a hotel, motel, inn, public lodging house, rooming house, or manufactured or mobile home which is tangible personal property, or in a tourist court, or in any place where sleeping accommodations are furnished to transient guests for rent, whether with or without meals.

"Person" means the same as the term is defined in rule 701—211.1(423).

"Renting" or *"rent"* means a transfer of possession or control of lodging for a fixed or indeterminate term for consideration and includes any kind of direct or indirect charge for such lodging or its use.

"Sales price" means the amount of consideration for renting of lodging and means the same as the term is defined in rule 701—211.1(423).

"State-imposed tax" means the hotel and motel tax levied by Iowa Code section 423A.3.

"Tax" or *"hotel and motel tax"* means either the state-imposed or locally imposed hotel and motel tax levied by Iowa Code sections 423A.3 and 423A.4, respectively.

"User" means a person to whom lodging is rented.

All other words and phrases used in this chapter and 701—Chapters 104 and 105 and defined in rule 701—211.1(423) have the meaning set forth in that rule for the purposes of these chapters.

103.1(2) Administration. The department is charged with the administration of the tax, subject to the rules, regulations, and direction of the director. The department is required to administer the tax as nearly as possible in conjunction with the administration of the state sales tax except that portion of the law which implements the streamlined sales and use tax agreement. Therefore, the term "retailer" will be used interchangeably between the two taxes.

103.1(3) Imposition. A state-imposed tax of 5 percent is imposed upon the sales price for the rental of any lodging if the rental occurs in this state. The state-imposed tax shall be collected by any lessor of lodging from the user of that lodging. The lessor shall add the tax to the sales price of the lodging, and the state-imposed tax, when collected, shall be stated as a distinct item, separate and apart from the sales price of the lodging and the local tax imposed, if any, under Iowa Code section 423A.4.

103.1(4) A city or county may impose by ordinance of the city council or by resolution of the county board of supervisors a tax on lodging, at a rate not to exceed 7 percent, which shall be imposed in increments of one or more full percentage points upon the sales price from the renting of lodging. When imposed by a city, the tax shall apply only within the corporate boundaries of that city and when imposed by a county shall apply only outside incorporated areas within that county.

This rule is intended to implement 2005 Iowa Code Supplement sections 423A.3 and 423A.4.

701—103.2(423A) Statute of limitations, supplemental assessments and refund adjustments. Within three years after a return is filed, the department shall examine it, determine the tax due, and give notice of assessment to the taxpayer. If no return has been filed, the department may determine the tax due and give notice thereof. If such determination is based upon an examination of books, papers, records, or memoranda, such an examination will not include any transactions completed three years or more prior to such examination.

Whenever books and records are examined by an employee designated by the director, whether to verify a return or claim for refund or in making an audit, an assessment must be issued within one year from the date of the completion of the examination. If not, the period for which the books and records were examined becomes closed and no assessment can be made. In no case is the one-year period of limitation an extension of or in addition to the three-year period of limitation.

The department may, at any time within the period prescribed for assessment or refund adjustment, make a supplemental assessment or refund adjustment whenever it is ascertained that any assessment or refund adjustment is imperfect or incomplete in any respect.

If an assessment or refund adjustment is appealed (protested under rule 701—7.41(17A)) and is resolved whether by informal proceedings or by adjudication, the department and the taxpayer are precluded from making a supplemental assessment or refund adjustment concerning the same issue involved in such appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation.

This rule is intended to implement Iowa Code sections 423.37 and 422.70 and 2005 Iowa Code Supplement sections 423A.3 and 423A.4.

701—103.3(423A) Credentials and receipts. Employees of the department have official credentials, and the retailer should require proof of the identity of persons claiming to represent the department. No charges shall be made or gratuities of any kind accepted by an employee of the department for assistance given in or out of the office of the department.

All employees authorized to collect money are supplied with official receipt forms. When cash is paid to an employee, the retailer should require the employee to issue an official receipt. Such receipt shall show the retailer's name, address and permit number; the purpose for the payment; and the amount of the payment. The retailer should retain all receipts, and only official receipts for payment will be recognized by the department.

This rule is intended to implement Iowa Code sections 422.68(1) and 422.70 and 2005 Iowa Code Supplement sections 423A.3 and 423A.4.

701—103.4(423A) Retailers required to keep records. Every retailer shall keep and preserve the following records:

1. A daily record of the amount of all cash and time payments and credit sales from the renting of rooms subject to tax under Iowa Code chapter 423A.
2. A record of all deductions and exemptions taken in filing a tax return.

The records required in this rule must be preserved for a period of three years and open for examination by the department during this period of time.

Retailers performing all or part of their record keeping and retention of books, records, and other sources of information under electronic data interchange process or technology, see 701—subrule 11.4(4).

If a tax liability has been assessed and an appeal is pending to the department, state board of tax review, district court, or supreme court, books, papers, records, memoranda or documents specified in this rule which relate to the period covered by the assessment shall be preserved until the final disposition of the appeal. This provision applies equally to parties to the appeal and other retailers who could claim a refund as a result of the resolution of the appeal.

Failure to keep and preserve adequate records shall be grounds for revocation of the state-imposed tax permit.

This rule is intended to implement Iowa Code section 423.41 and 2005 Iowa Code Supplement sections 423A.3 and 423A.4.

701—103.5(423A) Audit of records. The department shall have the right and duty to examine or cause to be examined the books, papers, records, memoranda or documents of a taxpayer for the purposes of verifying the correctness of a return filed or estimating the tax liability of any retailer. The right to examine records includes the right to examine copies of the retailer's state and federal income tax

returns. When a retailer fails or refuses to produce the records for examination when requested by the department, the director shall have authority to require, by a subpoena, the attendance of the retailer and any other witness whom the department deems necessary or expedient to examine and compel the retailer and witness to produce books, papers, records, memoranda or documents relating in any manner to the tax.

The department shall have the obligation to inform the retailer when an examination of the retailer's books, papers, records, memoranda or documents has been completed and the amount of tax liability, if any, due upon completion of the audit. Tax liability includes the amount of tax, interest, penalty and fees which may be due.

This rule is intended to implement Iowa Code sections 422.70 and 423.41 and 2005 Iowa Code Supplement sections 423A.3 and 423A.4.

701—103.6(423A) Billings.

103.6(1) *Notice of adjustments.*

a. An employee of the department, designated by the director to examine returns or make audits, who discovers discrepancies in returns or learns that a sales price subject to the tax may not have been listed, in whole or in part, or that no return was filed when one was due, is authorized to notify the person of the discovery by ordinary mail. The notice shall not be termed an assessment. It merely informs the person what amount would be due if the information discovered is correct.

b. Right of person upon receipt of notice of adjustment. A person who has received notice of an adjustment in connection with a return may pay the additional amount stated to be due. If payment is made, and the person wishes to contest the matter, the person should then file a claim for refund. However, payment will not be required until a certified assessment has been made (although interest will continue to accrue on any amount of tax which is determined to be due if payment is not made). If no payment is made, the person may discuss with the employee who notified the person of the discrepancy, either in person or through correspondence, all matters of fact and law which the person considers relevant to the situation. This person may also ask for a conference with the department. Documents and records supporting the person's position may be requested.

c. Power of employee to compromise tax claim. Only the director has the power to compromise any tax claims. The power of the employee who notified the person of the discrepancy is limited to the determination of the correct amount of tax.

103.6(2) *Notice of assessment.* If, after following the procedure outlined in paragraph 103.6(1)*"b,"* no agreement is reached and the person does not pay the amount determined to be correct within 20 days, a notice of the amount of tax due shall be sent to the person responsible for paying the tax. This notice of assessment shall bear the signature of the director and will be sent by mail.

If the notice of assessment is timely protested according to the provisions of rule 701—7.41(17A) and Iowa Code section 423.37, proceedings to collect the tax will not be commenced until the protest is ultimately determined, unless the department has reason to believe that a delay caused by such appeal proceedings will result in an irrevocable loss of tax ultimately found to be due and owing the state of Iowa. The department will consider a protest to be timely if filed no later than 60 days following the date of the assessment notice. See rule 701—7.41(17A).

This rule is intended to implement Iowa Code sections 422.70, 423.37, and 423.39 and 2005 Iowa Code Supplement sections 423A.3 and 423A.4.

701—103.7(423A) Collections. If determined expedient or advisable to do so, the director may enforce the collection of the tax liability which has been determined to be due. In such action, the attorney general shall appear for the department and have the assistance of the county attorney in the county in which the action is pending.

The remedies for the enforcement and collection of the tax are cumulative, and action taken by the department or attorney general shall not be construed to be an election on the part of the state or any of its officers to pursue any remedy to the exclusion of any other remedy.

This rule is intended to implement Iowa Code sections 422.70, 423.37, and 423.39 and 2005 Iowa Code Supplement sections 423A.3 and 423A.4.

701—103.8(423A) No property exempt from distress and sale. The provisions of Iowa Code section 422.26 apply with respect to a tax liability determined to be due by the department. The department shall proceed to collect the tax liability after it has become delinquent; and no property of the taxpayer is exempt from the process whereby the tax is collected.

This rule is intended to implement Iowa Code sections 422.26 and 423.42 and 2005 Iowa Code Supplement sections 423A.3 and 423A.4.

701—103.9(423A) Information confidential. When requested to do so by any person having a legitimate interest in such information, the department shall, after being presented with sufficient proof of the entire situation, disclose to such person the amount of unpaid taxes due by a taxpayer. Such person shall provide the department with sufficient proof consisting of all relevant facts and the reason or reasons for seeking information as to the amount of unpaid taxes due by the taxpayer. The information sought shall not be disclosed if the department determines that the person requesting information does not have a legitimate interest. The director may also authorize the examination of returns filed by a retailer by (1) other officers of the state of Iowa, (2) tax officers of another state if a reciprocal arrangement exists, or (3) tax officers of the federal government if a reciprocal arrangement exists. The director is also empowered to publish annual statistical reports relating to the operation of the tax. See rule 701—6.3(17A).

All other information obtained by employees of the department in the performance of their official duties is confidential as provided by law and cannot be disclosed.

This rule is intended to implement Iowa Code section 422.72 and 2005 Iowa Code Supplement sections 423A.3 and 423A.4.

701—103.10(423A) Bonding procedure. The director may, when necessary and advisable in order to secure the collection of the tax, require any person subject to the tax to file with the department a bond in an amount which the director may fix, or in lieu of such bond, securities approved by the director in an amount which the director may prescribe.

The determination of when and in what amount a bond is required will be determined pursuant to rule 701—11.10(422). The bond required under this rule and rule 701—11.10(422) shall be a single requirement with the amount to be determined with reference to both the potential state-imposed tax (see 701—Chapter 241) and the locally imposed tax liabilities, plus any applicable local option taxes. Whether or not the person required to post the bond files a monthly deposit for state-imposed tax purposes, the basis for determining the locally imposed tax portion of the bond shall be an amount sufficient to cover nine months or three quarters of tax liability.

This rule is intended to implement Iowa Code section 423.35 and 2005 Iowa Code Supplement sections 423A.3 and 423A.4.

701—103.11(423A) Sales tax. The hotel and motel tax is levied in addition to the state sales tax imposed in Iowa Code chapter 423. Additionally, the director of revenue is required to administer the hotel and motel tax as nearly as possible in conjunction with the administration of the state sales tax law except that portion of the law which implements the streamlined sales and use tax agreement. See 701—Chapters 12 to 14 for details. The computation of the tax shall be based on the sales price of the room excluding the sales tax.

This rule is intended to implement 2005 Iowa Code Supplement sections 423A.3, 423A.4, and 423A.6.

701—103.12(423A) Judicial review. Judicial review of actions of the director may be sought in accordance with the terms of the Iowa administrative procedure Act in a manner similar to that provided for review of sales tax matter. See 701—Chapter 7 for details.

This rule is intended to implement Iowa Code section 423.38 and 2005 Iowa Code Supplement sections 423A.3 and 423A.4.

701—103.13(423A) Registration. All persons who are required to collect and remit the locally imposed tax are required to register with the department as a hotel and motel tax collector.

This rule is intended to implement 2005 Iowa Code Supplement section 423A.6.

701—103.14(423A) Notification. Before a city's or county's local option hotel and motel tax can become effective, be revised, or be repealed, 45 days' notice of such action must be given to the director in writing by mail.

This rule is intended to implement 2005 Iowa Code Supplement section 423A.4.

701—103.15(423A) Certification of funds. Within 45 days after the date that the quarterly returns and payments are due, the director will certify to the treasurer of state the amount of locally imposed tax to be transferred from the general fund to the local transient guest tax fund which is to be distributed to each city and county which has adopted the tax. Payments received after the date of certification will remain in the general fund until the next quarterly certification.

This rule is intended to implement 2005 Iowa Code Supplement section 423A.7.

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CHAPTER 104
HOTEL AND MOTEL—
FILING RETURNS, PAYMENT OF TAX, PENALTY, AND INTEREST

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

701—104.1(423A) Returns, time for filing. On the quarterly sales tax return, every retailer shall report the gross sales subject to the hotel and motel tax for the entire quarter, listing allowable deductions and figuring tax for the entire quarter. The information required for the computation of the hotel and motel tax liability shall be separate from that required for the computation of the retail sales tax liability. Such information and computation must be stated and computed separately, even though the total tax liability may be paid with a single remittance.

The quarterly reports are due on the last day of the month following the end of the calendar quarter during which the tax is collected. If a person is required to collect the hotel and motel tax and file a monthly deposit for retail sales tax purposes, the monthly deposit should not include the hotel and motel tax collected during the period covered by the deposit.

When the due date falls on a Saturday, Sunday or legal holiday, the return is due the first business day following the Saturday, Sunday or legal holiday. If a return is placed in the mail, properly addressed and postage paid, and postmarked on or before the due date for filing, no penalty will attach should the return not be received until after that date. Mailed returns should be addressed to Sales and Use Tax Processing, Department of Revenue, Hoover State Office Building, P.O. Box 10412, Des Moines, Iowa 50319.

This rule is intended to implement Iowa Code sections 421.14 and 423.31 and 2005 Iowa Code Supplement section 423A.6.

701—104.2(423A) Remittances. The correct amount of tax collected and due shall accompany the forms prescribed by the department. The name, address and sales tax permit number of the sender and amount of tax for the quarterly remittance shall be stated. Every return shall be signed and dated. Reporting forms and a self-addressed return envelope shall be furnished by the department to the retailer; and, when feasible, every retailer shall use them when completing and mailing the return and remittance. All remittances shall be made payable to the Treasurer of the State of Iowa.

This rule is intended to implement Iowa Code section 423.31 and 2005 Iowa Code Supplement section 423A.6.

701—104.3(423A) Permits. An Iowa sales tax permit will be required under this chapter. However, the director may require all persons responsible for collecting and remitting a hotel-motel tax to register with the department.

Any person not in the business of renting rooms to transient guests, but who regularly rents rooms or residences at varying locations to transient guests, may register once under this chapter.

This rule is intended to implement 2005 Iowa Code Supplement section 423A.6.

701—104.4(423A) Sale of business. A retailer subject to the provisions of the Iowa Code relating to the hotel and motel tax who sells the business shall file a return within the month following the sale and pay all tax due. Any unpaid tax is due prior to the transfer of title of any personal property to the purchaser and, if unpaid, becomes delinquent one month after the sale.

A retailer discontinuing business shall maintain records for a period of three years from the date of discontinuing business unless a release from the provision is given in writing by the department.

This rule is intended to implement Iowa Code sections 422.51(2), 422.52, 423.31, and 423.33 and 2005 Iowa Code Supplement section 423A.6.

701—104.5(423A) Bankruptcy, insolvency or assignment for benefit of creditors. In cases of bankruptcy, insolvency or assignment for the benefit of creditors by the taxpayer, the taxpayer shall immediately file a return with the tax being due.

This rule is intended to implement Iowa Code section 423.31(6) and 2005 Iowa Code Supplement section 423A.6.

701—104.6(423A) Claim for refund of tax. Refunds of tax shall be made only to those who have actually paid the tax. A person or persons may designate the retailer to collect the tax as an agent for purposes of receiving a refund of tax. Anyone claiming a refund shall prepare the claim on the prescribed form furnished by the department.

A claim for refund shall be filed with the department within three years from the date the tax became due or one year from the date of payment, whichever is later, stating in detail the reasons and facts and, if necessary, attaching supporting documents on which the claim for refund is based. If the claim for refund is denied, and the person wishes to protest the denial, the department will consider a protest to be timely if filed no later than 60 days following the date of denial. See rule 701—7.41(17A).

This rule is intended to implement Iowa Code section 423.47 and 2005 Iowa Code Supplement section 423A.6.

701—104.7(423A) Application of payments. Since a combined hotel and motel tax and quarterly state sales tax return is utilized by the department, all payments received with the return will be applied to satisfy state sales tax and hotel and motel tax liabilities, which include penalty and interest. Application of partial payments received with the tax return and any subsequent partial payment received for that tax period will be applied based on a ratio formula, unless properly designated by the taxpayer as provided in Iowa Code section 421.60(2)*"d."* The denominator in the ratio shall be the total of the hotel and motel tax due and the state sales tax due less any monthly sales tax deposits. The numerators in the ratio formula shall be the amounts of hotel and motel tax due and the net state sales tax due.

EXAMPLE: XYZ hotel owes a total of $1,000 in net state sales tax and hotel and motel tax for the quarter. Of the $1,000 owed, $600 is for hotel and motel tax and $400 is for state sales tax. XYZ files its quarterly sales tax return accompanied by a $500 partial payment. The $500 partial payment would be applied based on the following computation:

$$\frac{600}{1000} \times 500 = \$300 \quad \text{Hotel and motel tax}$$

$$\frac{400}{1000} \times 500 = \$200 \quad \text{State sales tax}$$

All revenues received under Iowa Code chapter 423A are to be credited to the "local transient guest tax fund." Revenues include all interest and penalties applicable to any hotel and motel tax report or remittance, whether resulting from delinquencies or audits. All revenues received or moneys refunded 180 days after the date on which a city or county terminates its local hotel and motel tax shall be deposited in or withdrawn from the state general fund. The 180-day limitation applies to actual receipts or disbursements and not to accrued but unpaid tax liabilities or potential refunds.

This rule is intended to implement 2005 Iowa Code Supplement section 423A.7.

701—104.8(422A) Interest and penalty. Renumbered as 701—10.110(422A), IAB 1/23/91.

104.8(1) Rescinded IAB 1/23/91.

104.8(2) Renumbered as 701—subrule 10.110(1), IAB 1/23/91.

104.8(3) Renumbered as 701—subrule 10.110(2), IAB 1/23/91.

104.8(4) Renumbered as 701—subrule 10.110(3), IAB 1/23/91.

701—104.9(422A) Request for waiver of penalty. Renumbered as 701—10.111(422A), IAB 1/23/91.

701—104.10(423A) Extension of time for filing. Upon a proper showing of the necessity for extending the due date, the director is authorized to grant an extension of time in which to file a return. The extension shall not be granted for a period longer than 30 days. The request for the extension must be received on or before the original due date of the return. It will be granted only if the person requesting the extension shall have paid by the twentieth day of the month following the close of such quarter, 90 percent of the estimated tax due.

This rule is intended to implement Iowa Code section 423.31 and 2005 Iowa Code Supplement section 423A.6.

701—104.11(421,423A) Personal liability of corporate officers and partners for unpaid tax. If a retailer fails to pay hotel or motel tax due, any officer of a corporation or association or any partner of a partnership who has control of, supervision of, or the authority for remitting the hotel or motel tax payments and has a substantial legal or equitable interest in the ownership of the corporation or partnership is personally liable for payment of the tax, interest, and penalty if the failure to pay the tax is intentional. The dissolution of a corporation, association, or partnership does not discharge a responsible person's liability for failure to pay tax. Rule 701—12.15(422,423) describes this liability in more detail. The statements of the rule are made with reference to sales tax, but are also applicable to personal liability for hotel and motel tax.

This rule is intended to implement Iowa Code section 421.26 and 2005 Iowa Code Supplement chapter 423A.

701—104.12(421,423A) Good faith exception for successor liability. For taxes due and unpaid, an immediate successor's liability for unpaid hotel and motel tax is extinguished if the immediate successor can show that its purchase of the business owing the tax was done "in good faith." See rule 701—12.14(422,423) for a detailed analysis of immediate successor liability and the "good faith" exception to that liability.

This rule is intended to implement Iowa Code section 421.28 and 2005 Iowa Code Supplement chapter 423A.

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CHAPTER 105
LOCALLY IMPOSED HOTEL AND MOTEL TAX
[Prior to 12/17/86, Revenue Department[730]]

701—105.1(423A) Local option. A city or county may impose by ordinance of the city council or by resolution of the board of supervisors a hotel and motel tax subject to the approval of its citizens. The tax when imposed by a city shall apply only within the corporate boundaries of that city and when imposed by a county shall apply only outside incorporated areas within the county. A city or county can impose the tax only after an election at which a majority of those voting on the question favors imposition.

This rule is intended to implement 2005 Iowa Code Supplement section 423A.4.

701—105.2(423A) Tax rate. The hotel and motel tax rate cannot exceed 7 percent and must be imposed in increments of one or more full percentage points. If a jurisdiction seeks to impose, repeal or change the tax rate, the jurisdiction must hold an election. Within ten days of an election favoring the imposition of the tax, repeal of the tax or change in the tax rate, the county auditor must notify the director in writing of the favorable vote by sending a copy of the abstract of votes from the favorable election to the director.

This rule is intended to implement 2005 Iowa Code Supplement section 423A.4.

701—105.3(423A) Tax base. The hotel and motel tax is imposed upon the sales price from the renting of any and all lodging in a facility covered by Iowa Code chapter 423A. The sales price from renting includes any direct or indirect charge for the rooms.

105.3(1) The tax shall not apply: (a) when lodging is furnished to a person if that person rents any rooms or other lodging for more than 31 consecutive days, (b) to the renting of sleeping rooms in dormitories and in memorial unions at all universities and colleges located in the state, (c) to contracts made directly with the federal government, or (d) to the renting of a room to the guest of a religious institution upon real property exempt from tax as the property of a religious institution, if the reason for renting the room is to provide a place for a religious retreat or function and not a place for transient guests generally.

105.3(2) The tax base shall include the entire cost directly or indirectly related to the renting of lodging. If a person is charged for items other than "rent" in connection with the renting of lodging (e.g., food, telephone, laundry or recreation facility use), such charges must be stated separately or the entire charge will be considered "rent."

This rule is intended to implement 2005 Iowa Code Supplement section 423A.4.

701—105.4(423A) Imposition dates. A local hotel and motel tax shall be imposed on January 1 or July 1 following the notification to the director of revenue. Once imposed, the tax shall remain in effect at the rate imposed for a minimum of one year. See rule 701—103.14(423A) regarding notification.

This rule is intended to implement 2005 Iowa Code Supplement section 423A.4.

701—105.5(423A) Adding or absorbing tax. It is unlawful for any retailer responsible for collecting and remitting the hotel and motel tax to advertise or hold out, or state to the public or to any person, that the tax imposed will be assumed or absorbed by the retailer, or that the tax will not be considered as an element in the price to the public or the person renting a facility subject to the hotel-motel tax. When a retailer advertises in a manner so that it may be readily seen and read by the public that the price "includes tax," the retailer may charge a lump sum for renting the facility without making a separate charge for the tax. It is the responsibility of the retailer to provide proof that the retailer has complied with the method of advertising or displaying the price.

This rule is intended to implement Iowa Code sections 423.24 and 423A.6.

701—105.6(423A) Termination dates. A local hotel and motel tax may be terminated only on June 30 or December 31. See rule 701—103.13(423A) regarding notification.

This rule is intended to implement Iowa Code Supplement section 423A.4.

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CHAPTER 106
Reserved

TITLE XV
LOCAL OPTION SALES AND SERVICE TAX

CHAPTER 107
LOCAL OPTION SALES AND SERVICE TAX

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

701—107.1(422B) Definitions. The following words and terms are used in the administration of the local option sales and service tax:

The word "city" means a municipal corporation and includes towns in Iowa which were incorporated prior to July 1, 1975, but a city does not mean a county, township, school district, or any special purpose district or authority.

When the word "department" is used, it means the "Iowa department of revenue."

The term "unincorporated area of the county" means all areas of a county which are outside the corporate limits of all cities which are located within the geographical area of the county.

When the meaning of the word "sale" cannot be determined by referring to the definition of that word set out in Iowa Code section 422.42(17), its meaning should be determined by studying Iowa Code chapter 554, Uniform Commercial Code, Article 2.

701—107.2(422B) Local option sales and service tax.

107.2(1) *Imposition and jurisdiction.* Only a county may impose a tax upon the gross receipts of sales of tangible personal property sold within the county and upon the gross receipts from services rendered, furnished, or performed within the county. The local option sales and service tax may not be imposed by a city except under the circumstances described in rule 107.14(422B). However, the tax may be imposed by a county for transactions in a specified city. The tax may not be imposed on any transaction not subject to state sales tax. Effective May 1, 1999, transactions involving the use of natural gas, natural gas services, electricity or electric services are subject to a local excise tax that is to be imposed on the same basis as the state use tax, unless the sale or use involved in such transactions is subject to a franchise fee or user fee during the period the franchise fee or user fee is imposed. Except as otherwise provided in this chapter, all references to local option sales and service tax also include local excise tax, and all rules governing the administration and collection of local option sales and service tax are also applicable to local excise tax. With the exception of the natural gas and electric related transactions previously mentioned, there is no local option use tax. The local sales and service tax may be imposed at any rate of not more than 1 percent. See rule 701—14.2(422,423) for a tax schedule setting out the combined rate for a state sales tax of 5 percent and a local sales tax of 1 percent. Frequency of deposit and quarterly reports of local option tax with the department of revenue is governed by the retail sales tax provisions found in Iowa Code section 422.52. Local option tax collections shall not be included in the computation of the total tax to determine the frequency of filing under Iowa Code section 422.52.

The local option sales and service tax can be imposed upon the unincorporated area of any county only if a majority of those voting in the area favor its imposition. The tax can be imposed upon any incorporated area within a county only if a majority of those voting in that area favor its imposition. All cities within a county contiguous to each other must be treated as part of one incorporated area, and tax can be imposed in such an incorporated area only if the majority of persons voting in the total area covered by the contiguous cities favor imposition of the tax. For the purposes of this rule, the local option sales and service tax can only be imposed in those areas specified in the ordinance of a county board of supervisors which imposes the tax.

Within ten days of the election at which a majority of those voting in favor of the question of imposition, repeal, or change in the rate of tax, the county auditor must give notice of the election results to the director in the form of a copy of the abstract of votes.

107.2(2) *Procedures for implementing and repealing the tax.*

a. Implementing the tax. The ballot proposition imposing the tax shall specify the type and rate of the tax and other items set forth in Iowa Code section 422B.1. Effective April 1, 2000, the date of imposition of the tax must occur on either January 1 or July 1, but cannot be earlier than 90 days from

the date of the election in which a majority of those voting on the tax favored its imposition. Within ten days of the favorable election, the county auditor must give written notice of the election by sending a copy of the abstract of ballot from the favorable election to the director of revenue. For the purposes of this rule, the "abstract of ballot" is defined as abstract of votes as provided in 721—21.800(4).

A jurisdiction that has a local option tax that is set to expire may vote to impose another local option tax. However, due to the required imposition dates previously set forth, there may be a lapse in the tax because of an expiration of the former local option tax and the required imposition dates for imposition of a local option tax. Effective July 1, 2001, a local option jurisdiction may avoid a lapse in local option tax. To avoid a lapse in the tax, a jurisdiction may place on the ballot that the new local option tax will continue without repeal of the prior tax. If the required vote is in favor of imposition of the local option tax, the continued local option tax can be imposed so there is no lapse in the tax.

b. Repeal of the tax. A county that has imposed a local option tax may have the tax repealed. Repeal of the tax in an unincorporated area or an incorporated city area may occur either by the board of supervisors' acting upon its own motion or by the board's acting on a motion submitted by the governing body of an incorporated area asking for the repeal. The repeal is effective on the later of the date of the adoption of the motion of repeal or the earliest date set forth in Iowa Code section 422B.9(1).

Effective April 1, 2000, tax shall only be repealed on June 30, or December 31, but not sooner than 90 days following the favorable election if one is held. If the tax has been imposed prior to April 1, 2000, and at the time of election a date for the repeal was specified on the ballot, the tax may be repealed on that date despite the dates previously set forth.

This rule is intended to implement Iowa Code sections 422B.1 and 422B.8 and 422B.9 as amended by 2001 Iowa Acts, House File 715, section 14.

701—107.3(422B) Transactions subject to and excluded from local option sales tax.

107.3(1) *Sales of tangible personal property.* The local option sales tax is imposed upon the gross receipts from "sales" of tangible personal property which occur within that portion of a county where a tax is imposed. There is no local option use tax. The taxable event which determines where a sale occurs is "delivery" of the tangible personal property pursuant to contract for sale. If "delivery" occurs within a county, a sale has occurred there, and local option sales tax may be due. If delivery has not occurred within a county, local option sales tax is not due. Whether the contract for sale becomes binding or title passes within the county is irrelevant. *Harold D. Sturtz v. Iowa Department of Revenue,* 373 N.W.2d 131 (Iowa 1985). Delivery usually occurs when the seller of tangible personal property transfers physical possession of the property to the buyer. In most instances, this transfer takes place at the seller's place of business. However, if the seller transfers the property to the buyer from the seller's own vehicle, then the transfer usually takes place at the buyer's residence or place of business. Finally, if the seller transfers the property to a common carrier or the United States Postal Service for subsequent transport to the buyer, then "delivery" of the property occurs at the time and place where the seller transfers possession of the property to the postal service or the common carrier.

EXAMPLE 1. Assume that the whole of Polk County has enacted a local option sales tax. Assume that Mr. Edwards lives in Polk County and visits Smith's Furniture Storeroom also located in Polk County. Mr. Edwards enters into a contract to purchase furniture. Smith's Furniture Storeroom transports the furniture to a common carrier located in Polk County, who in turn transports it to Mr. Edwards' residence in Polk County. Local option sales tax is imposed since the delivery, and therefore the sale of the tangible personal property, occurred in a taxing jurisdiction. "Delivery" of the furniture occurred when the seller transferred physical possession of the furniture to the common carrier.

EXAMPLE 2. Assume that the whole of Polk County has enacted a local option sales tax and Jasper County has not. Mr. Jones, from Jasper County, comes to Smith's Furniture Showroom located in Polk County to buy some furniture. There Mr. Jones enters into a contract to purchase furniture. The furniture which has been purchased is placed on a Smith's Furniture Showroom truck and transported to Mr. Jones' home in Jasper County. "Delivery" of the furniture has occurred in Jasper County at the buyer's residence because that is where Smith's Furniture Showroom (the seller) transferred physical possession of the

furniture to Mr. Jones (the buyer) under their contract of sale. Because delivery has occurred within Jasper County, no Polk County local option sales tax will be collected on the transaction.

EXAMPLE 3. Assume the same factual circumstances as exist in the previous example except that Mr. Jones has driven from Jasper County to Smith's Furniture Showroom in a pickup truck and the furniture which Mr. Jones has contracted to buy is transferred onto his truck at the Smith's Furniture Showroom loading ramp. In this example, "delivery," and thus the sale of the furniture, has taken place in Polk County because that is where the seller transferred physical possession of the furniture to the buyer. Since delivery occurred in Polk County, Polk County local option sales tax would be due upon the gross receipts of the sale.

EXAMPLE 4. Again, assume that the whole of Polk County has enacted a local option sales tax. Again, assume that Jasper County, in which the city of Newton is located, has not. Ms. Wilson, a resident of Polk County, drives to Jackson's Furniture House in Newton to purchase some furniture. There Ms. Wilson signs a contract to purchase furniture. Jackson's Furniture House transports the furniture in its own truck from Newton to Ms. Wilson's home in Des Moines. "Delivery" of the furniture has occurred at Ms. Wilson's residence in Polk County because that is where physical possession of the furniture passed from the seller to the buyer. Since delivery has occurred within Polk County, the sale has occurred there, and the gross receipts of the sale are subject to Polk County's local option sales tax. Jackson's Furniture House is obligated to collect the Polk County local option sales tax and to remit that tax to the department of revenue.

EXAMPLE 5. Assume the same circumstances as in Example 4 except that Ms. Wilson has driven to Jackson's Furniture House in Newton in a pickup truck. The furniture is loaded into her pickup truck from the Jackson's Furniture House loading dock. In this situation delivery has occurred at the seller's loading dock outside Polk County; therefore, no obligation to pay Polk County local option sales tax exists with regard to the gross receipts of the sale.

107.3(2) *Taxation of sales of tangible personal property moved by carrier with and without the use of "F.O.B." or a similar term.*

a. Ordinarily, property "sold" in a local option sales tax jurisdiction is subject to that jurisdiction's tax. Property moved into or out of a local option sales tax jurisdiction by common carrier is "sold" when the seller transfers physical possession of the property to a carrier for shipment to a buyer unless the buyer and seller indicate their intent that the sale will occur elsewhere by use of the term F.O.B. or of a phrase similar to F.O.B. See Iowa Code section 554.2504. Use of an F.O.B. point located at a place other than that where a seller transfers possession of goods to a carrier usually indicates that the buyer and seller have agreed that sale of the goods will occur at the F.O.B. point. See *Harold D. Sturtz v. Iowa Department of Revenue*, 373 N.W.2d 131 (Iowa 1985). In the following examples, assume that Dubuque County has enacted a local option sales tax and Polk County has not.

EXAMPLE A. Assume that Company A is located in Dubuque County and Customer B is located in Des Moines, Iowa, in Polk County. Customer B orders a load of office furniture from Company A. A and B agree that A will secure a common carrier to transport the office furniture to B. A secures the services of Dubuque Cartage Co., which takes possession of the furniture in Dubuque, Iowa, and transports it to Des Moines. There is no mention of the term F.O.B. or any other indication of a delivery point in the contract of sale between A and B. In this case, sale of the furniture was in Dubuque County because that is where the seller of the furniture surrendered physical possession of it to the carrier. A is obligated to collect from B the local option sales tax imposed by Dubuque County.

EXAMPLE B. Assume the same facts as in Example A except that under the terms of the contract of sale delivery of the office furniture is "F.O.B. Des Moines." In this case, sale of the office furniture has occurred in Des Moines in Polk County and not in Dubuque County because the buyer and seller have, with the use of the term "F.O.B. Des Moines," agreed that the sale will take place there. Because of this, A cannot collect from B local option sales tax imposed by Dubuque County.

EXAMPLE C. Mr. Jones, a resident of Polk County, drives to Smith's Furniture Showroom located in Dubuque County to buy some furniture. There Mr. Jones enters into a contract to purchase furniture. Delivery of the furniture is to be "F.O.B. Dubuque." Smith's Furniture Showroom transfers the furniture to a common carrier in Dubuque who transports the furniture to Mr. Jones in Polk County. In this

example, sale of the furniture has occurred in Dubuque County because Mr. Jones and Smith's Furniture Showroom have agreed with the use of the term "F.O.B. Dubuque" that the sale will occur there. Because of this, the sale of the furniture is subject to Dubuque County's local option tax.

b. Taxation of property imported into a local option sales tax jurisdiction by a carrier. In the examples below (except for Example E), assume that the whole of Dubuque County, Iowa, has imposed a local option sales tax and that no portion of Polk County has imposed this tax. Further assume, unless otherwise noted, that any seller has the contacts (described in rule 107.8(422B)) with Dubuque County necessary for the county to require the seller to collect its local option sales tax.

EXAMPLE A. Company A is located in Dubuque County. The company orders a load of office furniture from Seller B located in Chicago, Illinois. Under the contract of sale, it is the obligation of B to place the furniture upon a carrier for transport to A. Chicago Transport picks up the furniture at B's loading dock in Chicago. Under these circumstances, sale of the furniture took place when B transferred possession of the furniture to Chicago Transport. Since sale of the furniture occurred in Illinois, the sale of the furniture is not subject to the Dubuque County local option sales tax.

EXAMPLE B. Assume the same facts as in Example A except that the contract for sale of the furniture between A and B calls for delivery of the furniture "F.O.B. Dubuque County." In this case, with the F.O.B. provision, the parties have agreed that sale of the furniture will occur in Dubuque County, Iowa. Thus, B is obligated to collect Dubuque County local option sales tax from A.

EXAMPLE C. Assume, again, that Company A is located in Dubuque County. However, for the purposes of this example, assume that Company B is located in Des Moines in Polk County, Iowa. A orders office furniture from B; shipment to Dubuque, Iowa, is by carrier with no mention of an F.O.B. point or any other indication of a delivery point in the contract between A and B for the sale of the furniture. In this case, sale occurred in Polk County when B placed the furniture in the hands of the carrier. B cannot collect Dubuque County local option sales tax from A.

EXAMPLE D. Assume the facts are as stated in Example C except that the contract between A and B specifies that delivery of the furniture shall be "F.O.B. Dubuque, Iowa." In this case, B is obligated to collect Dubuque County local option sales tax.

EXAMPLE E. Assume that the whole of Polk County has enacted a local option sales tax. Assume that Jasper County, in which the city of Newton is located, has not. Ms. Wilson, a resident of Polk County, drives to Jackson's Furniture House in Newton to purchase some furniture. There Ms. Wilson signs a contract to purchase furniture. Jackson's Furniture House delivers the furniture to a common carrier for shipment F.O.B. Ms. Wilson's home in Polk County. Since delivery (by virtue of the F.O.B. point) is in Polk County, that jurisdiction's local option tax is imposed on the sale.

c. Taxation of exports from a jurisdiction imposing Iowa local option sales tax. Sales of property which a seller transfers to a carrier for subsequent shipment to a point outside Iowa are not subject to Iowa local option sales tax. This exemption does not apply if the property is subsequently returned to a point anywhere within Iowa (not only within the jurisdiction imposing the local option sales tax), unless the return is solely in the course of interstate commerce or transportation; nor does the exemption apply if the buyer or the buyer's agent other than the carrier takes physical possession of the property within the jurisdiction imposing the local option sales tax. For additional material relating to this exemption see rule 701—17.8(422). For the purposes of this paragraph *"c,"* assume that the whole of Dubuque County imposes a local option sales tax, that Company B sells furniture and is located in Dubuque, Iowa, and that Company A is located outside Dubuque, Iowa.

EXAMPLE A. Company A is located in Chicago, Illinois. The company orders a load of office furniture from Company B. Under the contract for sale, transport of the furniture from Dubuque County to Chicago, Illinois, is by carrier with no F.O.B. point or other indication of a delivery point mentioned. Sale of the furniture occurs in Dubuque County because that is the point at which the seller transferred the furniture to the carrier transporting it. However, that sale is exempt from Dubuque County local option sales tax because Company B transferred the furniture to the carrier for shipment to a point outside Iowa (Chicago, Illinois) and the furniture was subsequently used there.

EXAMPLE B. Assume the same facts as in Example A except that Company A's purchasing agent comes to Dubuque County, purchases the furniture there, takes possession of the furniture in Dubuque

County and then arranges for a carrier to transport the furniture from Dubuque County to Chicago, Illinois. In this case, the exemption is not applicable and local option sales tax applies since the buyer (Company A) took possession of the furniture in Dubuque County prior to transferring the furniture to the carrier.

107.3(3) *Place of sale of tangible personal property in various special situations.*

a. The place of sale for sales from vending machines is the location of each individual vending machine. This is the point at which the property is delivered to the consumer.

b. The usual place of sales by an itinerant merchant or peddler or by a salesperson having a route is the customer's home, business establishment, or any other point at which the itinerant peddler meets with a customer and solicits an order or completes a contract for sale. The point where the property which is the subject of the contract of sale is delivered is the point which determines if the local option sales tax is imposed.

EXAMPLE. A Super Sweep vacuum cleaner salesperson has a sales route which takes in most of Polk County, Iowa. Assume that local option sales tax is imposed only within the corporate boundaries of Polk City, Polk County. The salesperson travels to Polk City and enters into contracts for sales of vacuum cleaners to persons A, B, and C. Under the contract for sale with person A, the vacuum cleaner is immediately delivered from the salesperson's truck to person A. Under the contract with person B, the vacuum cleaner will be delivered to that person's home in Polk City at a later date. Under the contract with person C, the vacuum cleaner will be delivered, at a future date, to the home of that person's mother in Des Moines. The gross receipts from the sales to persons A and B would be subject to local option sales tax, but not the gross receipts from the sale to person C.

c. If a person who purchases items for resale or processing withdraws those items from inventory or from a stock of materials held for processing, the gross receipts from the sales of such items are subject to local option sales tax if they are withdrawn within the area of a county in which the local option tax is imposed, regardless of where these items were purchased.

EXAMPLE. Assume that the whole of Polk County has a local option sales tax and Jasper County does not. Ms. Carver's home and furniture store are located in Polk County. In Jasper County she purchases five unfinished rocking chairs and the stain and varnish to finish them for sale. She gives the Jasper County retailer exemption certificates stating that the rockers are purchased for resale and the stain and varnish for use in processing. After returning to Polk County Ms. Carver finishes one rocking chair, and instead of selling it, uses it in her own home. Polk County local option sales tax is due upon the value of the rocker, stain, and varnish withdrawn and used.

107.3(4) *Sales of tangible personal property to contractors, contractor-retailers, and the use of property by the manufacturer as building material.*

a. Owners, contractors, subcontractors, or builders purchasing building materials, supplies, and equipment for the erection of buildings, or the alteration, repair, or improvement of real property are liable for payment of local option sales tax if they take delivery of any material, supplies, or equipment in that portion of a county in which the tax is imposed. Neither the place where the parties contract for sale, nor the place where the materials, supplies or equipment are stored or used is of importance in determining liability for the tax.

As of May 4, 1988, construction contractors may apply for refund of additional local option sales or service tax paid as a result of the imposition of or an increase in the rate of local option tax if the following circumstances exist:

(1) The additional tax was paid upon tangible personal property incorporated into an improvement to real estate in fulfillment of a written construction contract fully executed prior to the date local option sales tax is imposed or its rate increased, and

(2) The contractor has paid the full amount of both state and local option sales tax due to the department or to a retailer, and

(3) The claim is filed on forms provided by the department within six months of the date on which the contractor has paid the tax.

See rule 701—19.2(422,423) for a description of a similar right of refund applicable to state sales tax. The rule contains several examples useful in understanding this right of refund for local option

tax paid. This local option tax right of refund is not applicable to equipment transferred under a mixed construction contract. See rule 701—19.9(422,423) for a description of a mixed construction contract and rule 701—19.10(422,423) for a description of "equipment."

b. In the case of contractors, subcontractors, or builders who are also retailers (see rule 701—19.4(422,423) for a description of these persons) local option sales tax may be imposed by a county in which those persons withdraw building materials, supplies, and equipment from inventory for construction purposes or in which the property is delivered to users or consumers who have purchased it.

c. The use within any county of tangible personal property by that property's manufacturer, as building materials, supplies, or equipment in the performance of a construction contract, or for any purpose except for resale or processing is a sale at retail within the county by the manufacturer. The local option sales tax is computed upon the cost for the manufacturer of the fabrication or production of the materials, supplies, or equipment.

701—107.4(422B) Transactions subject to and excluded from local option service tax.

107.4(1) Local option service tax is imposed upon any enumerated service if the service is rendered, furnished, or performed within the area of a county where that tax is imposed. If only the product or result of a service is used within such an area, no local option service tax may be imposed upon the gross receipts of that service. For the purposes of Examples 1, 2, and 3 in this subrule, assume that a local option service tax is imposed within all of Polk County and that no such tax is imposed within Jasper County.

EXAMPLE 1. Boat repair is a taxable, enumerated service. George, a resident of Polk County, takes his boat to Jasper County to be repaired by Bob. Completely within the boundaries of Jasper County, Bob renders the enumerated service of boat repair. Bob then returns the boat to George's home in Polk County. No tax is due upon Bob's charges for the repair. The entire service of boat repair was rendered in Jasper County where there is no local option tax. Even if George and Bob had entered into a contract for the repair of the boat within Polk County, this transaction would not be subject to Polk County's local option service tax. Rendering or furnishing of the service, not entry into a binding contract for performance of the service, is the taxable event for the purpose of local option service tax.

EXAMPLE 2. Mr. Jolson is a contractor-retailer who performs roof repair services and also has a store where he sells roofing materials. The store is located in Jasper County. Roof repair is a taxable service. Mr. Keller's home is located in Polk County. At the store in Jasper County, Mr. Keller and Mr. Jolson contract for repair of Mr. Keller's roof. Mr. Jolson then enters Polk County, repairs the roof on Mr. Keller's home, and returns to Jasper County. The gross receipts from this roof repair would be subject to Polk County local option service tax regardless of where Mr. Keller and Mr. Jolson entered into the contract for repair of the roof.

EXAMPLE 3. "Machine repair of all kinds" is a taxable enumerated service. Ms. Robinson lives in Jasper County. Ms. Beatty owns a shop which repairs refrigerators. Ms. Robinson's refrigerator breaks down. She calls Ms. Beatty, who drives her truck to Ms. Robinson's home in Jasper County. If Ms. Beatty repairs the refrigerator at Ms. Robinson's home in Jasper County, the repair is not subject to Polk County local option service tax. If Ms. Beatty placed Ms. Robinson's refrigerator on the truck, took it to her shop in Polk County, repaired it there and then took the refrigerator back to Ms. Robinson's home, the service would be subject to Polk County local option service tax. In the first instance, the service was performed within Jasper County; in the second instance, it was performed within Polk County.

EXAMPLE 4. As of July 1, 1985, "water softening" is a taxable enumerated service. For the purposes of this example, assume that a local option service tax has been imposed in Polk City, Polk County, but nowhere else within Polk County. Katz Water Softening Service has customers in Des Moines, Polk City, and the unincorporated areas of Polk County. Assuming that water softening service is performed where a customer's water softener is located, services rendered to customers within Polk City would be taxable. Services rendered to customers in Des Moines and the unincorporated areas of Polk County would not be taxable. The location of Katz's office would not be material in determining whether service for a particular customer is taxable or not.

107.4(2) Reserved.

701—107.5(422B) Single contracts for taxable services performed partly within and partly outside of an area of a county imposing the local option service tax.

107.5(1) If a contract for a taxable service is substantially performed partly within and partly without the areas of a county imposing a local option service tax, it will be presumed that all of the contract is performed within the area of the county imposing the tax unless that portion of the service not subject to tax is separately stated, separately billed, and is reasonable in amount. For purposes of the examples in this subrule, assume that the whole of Polk County imposes a local option service tax, but Jasper County and Boone County do not.

EXAMPLE 1. "Painting" is a taxable enumerated service. Mrs. Pauley owns three houses, one each in Polk, Jasper, and Boone Counties. Pelz Painting Service contracts with Mrs. Pauley to paint all three houses for $6,000. The contract specifically states that $2,000 of this amount is to be paid for painting the Polk County house. The houses are all approximately equal in size. Since the amount paid for painting the Polk County house is separately stated, separately itemized, and reasonable in amount, Polk County local option sales tax is due upon the $2,000 amount only.

EXAMPLE 2. "Tangible personal property rental" is a taxable enumerated service. Assume that Kim's Tree Trimming Company rents a machine from Bob's Rent-All. The rental contract states that a machine will be rented for three months for $6,000 and that $5,500 of this amount is paid for rental of the machine in Jasper County and $500 of this amount for rental of the machine for use in Polk County. After investigation, it is learned that during a three-month period of the rental contract the machine was used for one week in Jasper County and for two months, three weeks and two days in Polk County. The amount paid for use of the machine in Polk County is separately stated and separately itemized; however, it is not reasonable in amount. Local option sales tax would be due on some greater amount than $500.

EXAMPLE 3. Sam Shovel runs a detective agency. He is hired by Mrs. Lane to conduct an investigation. Over the course of a month Mr. Shovel conducts the investigation partly in Polk, partly in Jasper, and partly in Boone County. The investigation involves travel, examination of documents, surveillance, interviews, and conducting chemical tests on various pieces of material. It is virtually impossible to fairly apportion the amounts of the final bill which are attributable to Polk, Jasper, and Boone Counties, respectively. Unless Sam Shovel can prove that the amount of his activity attributable to Polk County is inconsequential or insubstantial, the entire amount of his final bill to Mrs. Lane is subject to Polk County local option service tax.

107.5(2) Reserved.

701—107.6(422B) Motor vehicle, recreational vehicle, and recreational boat rental subject to local option service tax. The principles used to determine whether motor vehicle, recreational vehicle, and recreational boat rental are subject to Iowa tax are set out in rule 701—26.68(422). Basic principles which determine whether rentals are or are not subject to Iowa sales tax can be used to determine if the rentals are subject to a local option service tax. For example, a short-term rental of a vehicle has occurred within a county imposing a local option sales tax when, pursuant to a rental contract, possession of a vehicle is transferred to a customer. The tax is collectible when any lump sum or periodic payment is due under the rental agreement and paid within the local option county. Transfer of possession of the vehicle must have occurred in the county imposing the local option tax; a contract for rental need not have been executed there.

EXAMPLE 1. Assume that the whole of Polk County has a local option service tax. Customer A signs a rental contract with and takes possession of a rental car from an office of a rental agency located in Des Moines. Thereafter, A drives the car from Des Moines to Dubuque, Iowa, and back. In Des Moines, the rental agency collects gross receipts from the rental of $100. Such gross receipts would be subject to Polk County local option sales tax.

EXAMPLE 2. Assume the same facts as in Example 1 except that customer B drives the automobile to Dubuque, Iowa, where no local option tax is imposed and drops it off at a rental agency office there. Also in Dubuque, the customer pays a total charge for the rental of $50. No Polk County local option service tax is due. Transfer of possession occurred in Polk County, but payment for the rental did not.

EXAMPLE 3. Assume the same facts as in Examples 1 and 2, except that before taking possession of the vehicle in Des Moines, customer A pays the rental agency a $25 deposit. Also, rental of the vehicle is on a mileage and per-day basis. Customer A drives the vehicle to Dubuque, Iowa. There it is discovered that the mileage and per day charges add up to $50. Customer A pays the rental agency an additional $25 in Dubuque which has no local option tax. Polk County local option service tax is due upon the $25 deposit paid in Des Moines, but not upon the $25 paid in Dubuque. Only the payment made under the lease in Des Moines is subject to Polk County local option tax.

EXAMPLE 4. Assume the same taxation situation as in Example 1. Customer A rents a car in Dubuque, Iowa, which has no local option tax and drives it to Des Moines which has a local option tax. In Des Moines, A pays $50 for the use of the car. Since transfer of possession of the vehicle did not take place in Polk County, the leasing transaction is not subject to local option service tax. Payment under the lease alone, within a county, does not allow imposition of that county's local option sales tax.

701—107.7(422B) Special rules regarding utility payments. Delivery of gas and water occurs and the services of electricity, heat, communication, and cable television are rendered, furnished, or performed at the address of the subscriber who is billed for the purchase of this property or services. If a telephone subscriber with an address in a local option service tax county uses a telephone credit card within Iowa but outside that county to make an intrastate telephone call, billings to the subscriber's number within the local option service tax county are subject to local option tax.

EXAMPLE. Assume the whole of Polk County, but no other county in Iowa, has a local option service tax. Mrs. Adams lives in Polk County and has a telephone credit card. While staying at a Fort Dodge hotel, Mrs. Adams uses a telephone credit card to call a number in Cedar Rapids. The charge for this use is billed to Mrs. Adams' number in Polk County. The amount of the charge is subject to Polk County local option service tax.

701—107.8(423B) Contacts with county necessary to impose collection obligation upon a retailer.

107.8(1) *Nexus requirements for retailers prior to July 1, 1999, and after June 30, 2005.* Before any retailer can be required to collect the local option sales or service tax, certain minimal connections must exist between the county imposing the tax and the retailer. These connections are required by the due process clause of the Fourteenth Amendment and the commerce clause of the United States Constitution. Basically, for due process purposes, the retailer must be purposefully directing its activities at the county's residents in such a way that the retailer is availing itself of an economic market in the county. Maintaining any sort of office, sending any solicitor or salesperson, whether independent contractor or employee, transporting property which the retailer sells into the county in the retailer's own vehicle, or continuous solicitation of business within a county, are nonexclusive examples of purposefully directed activities for which the obligation to collect local option sales tax can be imposed upon a retailer. *Quill Corporation v. North Dakota,* 504 U.S. 298, 112 S.Ct. 1904, 119 L.Ed.2d 91 (1992). An Iowa retailer's physical presence within a county is no longer necessary to require the retailer to collect the county's local option tax. However, a retailer located outside the state of Iowa that does not have a physical presence in the county imposing the local option tax cannot be required, under the commerce clause of the United States Constitution, to collect this state's local option sales tax; Quill, supra. Such physical presence in the county exists if it occurs through the retailer's presence or by the presence of independent contractors who act on behalf of the retailer. A retailer that sells to a purchaser that possesses a valid direct pay permit issued by the department need not collect local option sales or service tax from the purchaser. Instead, the purchaser must remit tax directly to the department. However, a retailer should obtain a valid exemption certificate from the purchaser for the tax not collected. For further details regarding direct pay permits see rule 701—12.3(422) and for further details regarding exemption certificates see rule 701—15.3(422,423).

EXAMPLE A. Assume that Dubuque County has a local option tax and Polk County does not. Customer A is located in Dubuque County and Company B in Polk County. A buys office furniture from B with delivery of the furniture to be by common carrier "F.O.B. Dubuque, Iowa." Company B has no employees or property in Dubuque County, solicits no business there, and does not engage

in any other activities purposefully directed toward Dubuque County. Thus, Company B engages in no purposefully directed activities in Dubuque County which could be used to require B to collect Dubuque County local option sales tax. In this case, even though sale of the furniture took place in Dubuque County (see rule 107.3(422B)) B cannot be required to collect local option sales tax from A.

EXAMPLE B. Assume that the whole of Polk County has enacted a local option sales tax. Assume that Jasper County, in which the city of Newton is located, has not. Ms. Wilson, a resident of Polk County, drives to Jackson's Furniture House in Newton to purchase some furniture. There Ms. Wilson signs a contract to purchase furniture with delivery "F.O.B. Des Moines, Polk County." Jackson's Furniture House transfers the furniture to a common carrier who transports it to Ms. Wilson in Polk County. Unlike the retailer in Example A above, Jackson's Furniture House actively solicits business in Polk County by way of television and newspaper advertising. It also transports some furniture to Polk County customers in its own trucks, and its employees at times enter Polk County to repair furniture previously sold to Polk County residents. Jackson's Furniture House is obviously engaged in purposefully directed activities toward Polk County (some of the activities involving its physical presence there and some not), and by virtue of those activities is obligated to collect Polk County's local option sales tax.

EXAMPLE C. Assume the same facts as in Example B immediately above except assume that Jackson's Furniture House engages continuously and intentionally in soliciting business in Polk County by way of television and newspaper advertising, but has no "physical presence" in Polk County. Jackson's Furniture House has no employees delivering or repairing furniture in Polk County, and no property in that jurisdiction; for example, no trucks or furniture repair tools. Jackson's Furniture House is still engaged in "purposeful activity" in Polk County consisting of a continuous and widespread solicitation of business which is of such a nature that this activity requires it to collect local option tax on the gross receipts from its sales there.

EXAMPLE D. For the purposes of understanding this example, assume that the whole of Polk County has enacted a local option sales tax. Don's Mail Order House has offices and a warehouse in Kansas City, Missouri. Don's Mail Order House continuously solicits business in Polk County by way of advertising there on local television and radio and by sending fliers and catalogs to Polk County residents through the mails. However, Don's Mail Order House has no physical presence anywhere in Polk County. It sends no representatives into Polk County for any purpose, owns no property there, and has no independent contractors performing activities on its behalf in Polk County. So, as a result of its solicitations which are purposefully directed at the Polk County market, the due process clause of the Fourteenth Amendment of the United States Constitution does not prohibit Polk County from requiring Don's Mail Order House to collect its tax. However, since Don's Mail Order House is an out-of-state retailer (in contrast to the retailer described in Example C above) with no physical presence in Polk County, the commerce clause of the United States Constitution prevents the county from requiring that Don's Mail Order House collect its local option tax. Under the facts as stated in this example, it would be unconstitutional to require Don's Mail Order House to collect Polk County's local option sales tax.

EXAMPLE E. Assume the existence of the same facts as in Example D except that Don's Mail Order House has a representative with an office located in Polk County whose job it is to solicit and develop business for Don's Mail Order House in the state of Iowa. Because of that representative's presence in Polk County, the commerce clause of the United States Constitution no longer prohibits Polk County from requiring Don's Mail Order House to collect its local option sales tax.

The "connections" with a county described in this rule are not to be confused with the concepts of "sale" and "delivery" mentioned in rule 107.3(422B) above. A retailer may have connections with a county imposing a local option sales tax significant to the point that the county can, constitutionally, require the retailer to collect its tax if the retailer sells goods or performs taxable services within the county. However, if the retailer neither sells goods nor performs services within that county, the retailer cannot be forced to collect a tax there. Conversely, if a retailer delivers (and thus sells) goods in a county imposing a local option sales tax, but does not have the connections described in this rule with that county, then the retailer cannot be made to collect that county's local option tax even if it is making sales of goods there. It is only very rarely, if ever, that a retailer would be performing services within a county but would not have the connections with that county necessary to require the retailer to collect its tax.

107.8(2) *Nexus requirements for retailers effective from July 1, 1999, through and including June 30, 2005.* Effective from July 1, 1999, through and including June 30, 2005, to be obligated to collect a local option tax imposed by a jurisdiction, a retailer must have physical presence within that local option jurisdiction and "delivery," as defined in rule 107.3(422B), must occur within the jurisdiction. A retailer is considered to have physical presence within a local option tax jurisdiction if the retailer has, among other things, an employee or a representative or a site owned, leased or rented within the jurisdiction. For additional information, see the definition of "retailer" as provided in 2003 Iowa Code sections 422.42(13) and 423.1(8) and the definition of "retailer" set out in 2005 Iowa Code section 423.1(42). See rule 701—30.1(423) for a list of other activities which will create nexus for local option tax purposes.

Rules 701—107.1(422B) to 701—107.8(423B) are intended to implement Iowa Code section 422.53 and 2005 Iowa Code Supplement chapter 423B.

701—107.9(423B,423E) Sales not subject to local option tax, including transactions subject to Iowa use tax. The local option sales and service tax is imposed upon the same basis as the Iowa state sales and service tax, with six exceptions:

1. The sales price from the sale of or service of providing motor fuel or special fuel as defined under Iowa Code chapter 452A is subject to local option tax. However, the sales price from the sale or service of these types of fuels is exempt from local option tax if all of the following criteria are met:

- The motor or special fuel must be consumed by a motor vehicle for highway use, or used in watercraft or aircraft;
- Fuel tax must have been paid on the transaction; and
- A refund has not been or will not be allowed.

2. For taxes imposed prior to July 1, 2005, the sales price from the rental of rooms, apartments, or other lodging which was taxed under Iowa Code chapter 422A during the period in which the hotel and motel tax was imposed under that chapter shall be exempt from local option sales tax. As of July 1, 2005, the sales price of lodging is no longer subject to the sales tax imposed by Iowa Code chapter 423; thus, the sales price of lodging is not subject to the local option sales tax. Also, as of July 1, 2005, Iowa Code chapter 422A is repealed. See 701—Chapter 241 for a description of the new state-imposed tax on lodging; see 701—Chapters 103, 104, and 105 for a description of the new local option hotel and motel tax.

3. The sales price from the sale of natural gas or electricity in a city or county is exempt from tax if the sales price is subject to a franchise or user fee during the period the franchise or user fee is imposed.

4. A local taxing jurisdiction is prohibited from taxing the sales price from a pay television service consisting of a direct-to-home satellite service. Section 602 of the federal government's Telecommunications Act of 1996 defines a "direct-to-home satellite service" as "only programming transmitted or broadcast by satellite directly to the subscribers' premises or in the uplink process to the satellite." A "local taxing jurisdiction" is "any municipality, city, county, township, parish, transportation district, or assessment jurisdiction, or any other local jurisdiction in the territorial jurisdiction of the United States, with the authority to impose a tax or fee, but does not include a state."

5. The sales price from sales of equipment by the Iowa state department of transportation is exempt from local option sales tax.

6. Certain construction-related equipment and other items are exempt.

The general application of this exception is as follows: The sales price from the sale of self-propelled building equipment, pile drivers, motorized scaffolding, or attachments that are customarily drawn or attached to self-propelled building equipment, motorized scaffolding, including auxiliary attachments which improve the performance, safety, operation, or efficiency of the equipment, and replacement parts, and that are directly and primarily used by contractors, subcontractors, and builders for new construction, reconstruction, alterations, expansion, or remodeling of real property or structures is exempt from local option sales tax. As of July 1, 2005, taxation of the above-mentioned machinery and equipment is removed from Iowa Code chapter 423 and thus is not subject to the local option sales tax. See 701—Chapter 241, division II, for an explanation of the new state excise tax imposed on sales of construction machienry and equipment.

The following definitions apply to this rule:

"Directly used" includes equipment used by contractors, subcontractors, and builders for new construction, reconstruction, alterations, expansion, or remodeling of real property or structures. To determine if equipment is "directly used," one must first ensure that the equipment is used during the specified activity and not before that process has begun or after it has ended. If the machinery or equipment is used in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures, to be "directly used," it must constitute an integral and essential part of such activity as distinguished from a use in such an activity that is incidental, merely convenient, or is remote. The fact that the machinery or equipment is essential or necessary to new construction, reconstruction, alterations, expansion, or remodeling of real property or structures does not mean that it is also "directly used" in such an activity. Machinery or equipment may be necessary to one of the previously mentioned activities, but so remote from it that it is not directly used in the activity.

In determining whether machinery or equipment is used directly, consideration should be given to the following factors:

1. The physical proximity of the machinery or equipment to other machinery or equipment whose direct use is unarguable. The closer the machinery or equipment whose direct use is questionable is to the machinery or equipment whose direct use is not questionable, the more likely it is that the former is directly used in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures.

2. The proximity in time of the use of machinery or equipment whose direct use is questionable to the use of machinery whose direct use is not questionable. The closer in time the use, the more likely that the questionable machinery or equipment's use is direct rather than remote.

3. The active causal relationship between the use of the machinery or equipment in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures.

The fewer intervening causes between the use of the machinery or equipment and the production of the product, the more likely it is that the machinery or equipment is directly used in the activities at issue.

"Equipment" means tangible personal property (other than a machine) directly and primarily used in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures. "Equipment" may be characterized as property which performs a specialized function, which, of itself, has no moving parts, or if it does possess moving parts, its source of power is external to it.

"Primarily used" includes machinery and equipment utilized in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures. Machinery or equipment is "primarily used" in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures if more than 50 percent of the total time the machinery or equipment is used in the activity at issue (new construction, reconstruction, alterations, expansion, or remodeling of real property or structures). If a unit of machinery or equipment is used more than 50 percent of the time for the activity at issue and the balance of time for other business purposes, the exemption applies. If a unit of machinery or equipment is used 50 percent or more of the time for business purposes and not being used in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures, the exemption does not apply.

"Real property" includes the earth, the ground, a building, structure and other tangible personal property incorporated into the ground or a building that becomes a part of the ground, structure or the building if removal of the property from the ground or building will substantially damage the property, ground, or building or substantially diminish the value of the property, ground, or building. The ground or the earth is not machinery or equipment. A building is not machinery or equipment. *Mid-American Growers, Inc. v. Dept. of Revenue,* 493 N.E.2d 1097 (Ill. App. Ct. 1986). Instead, a building or structure that is affixed to the ground is considered to be real property. Fence posts embedded in concrete and electrical wiring, light fixtures, fuse boxes, and switches are examples of property sold for incorporation into the ground or a building, respectively. A test which can be applied to differentiate between equipment and real property is the following: If property is sold to a contractor, and the retailer would be required to consider the property "building material" and charge the contractor sales tax upon the purchase of this building material, then sale of the property is not exempt from local option tax.

"Replacement parts" means those parts essential to any repair or reconstruction necessary to self-propelled building equipment, pile drivers, motorized scaffolding, or attachments customarily drawn or attached to self-propelled building equipment, motorized scaffolding, including auxiliary attachments which improve the performance, safety, operation, or efficiency of such equipment or equipment's exempt use in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures. "Replacement parts" does not include attachments and accessories not essential to the operation of the machinery or equipment itself (except when sold as part of the assembled unit) such as cigarette lighters, radios, canopies, air-conditioning units, cabs, deluxe seats, and tools or utility boxes.

"Self-propelled building equipment" has the same meaning as that in 701—subrule 17.9(5), paragraph *"c,"* where the term is defined as an implement which is capable of movement from one place to another under its own power. "Self-propelled building equipment" includes, but is not limited to, skid-loaders, earthmovers and tractors.

Since the local option tax is imposed only on the same basis and not on any greater basis than the Iowa sales and service tax, local option tax is not imposed on any transactions subject to Iowa use tax, including use tax applicable to vehicles subject to registration or subject only to the issuance of a certificate of title. Also, exemptions which are applicable only to Iowa use tax cannot be claimed to exempt any transaction subject to local option sales tax.However, if a transaction involves the use of natural gas, natural gas service, electricity, or electric service, then local excise tax is imposed on the same basis as Iowa use tax under Iowa Code chapter 423. Local excise tax is to be collected and administered in the same manner as local option sales and service tax. Except as otherwise provided in this chapter, all rules governing local option sales and service tax also apply to local excise tax.

When tangible personal property is sold within a local option sales tax jurisdiction and the seller is obligated to transport it to a point outside Iowa or to transfer it to a common carrier or to the mails or parcel post for subsequent movement to a point outside Iowa, the sales price from the sale is exempt from local option sales tax provided the property is not returned to any point within Iowa except solely in the course of interstate commerce or transportation. (Iowa Code subsection 423.3(43)). Property sold in a local option sales tax jurisdiction for subsequent transport to a point outside the jurisdiction but otherwise within the borders of Iowa is not exempt from tax.

This rule is intended to implement 2005 Iowa Code Supplement sections 423B.5 and 423E.3.

701—107.10(422B) Local option sales and service tax payments to local governments. For periods after July 1, 1997, when a local sales and service tax is imposed, the director of revenue within 15 days of the beginning of each fiscal year shall send to each city or county where the local option tax is imposed, an estimate of the tax moneys each city or county will receive for the year and for each month of the year. For periods after July 1, 2002, the director of revenue by August 15 of each fiscal year shall send to each city or county where the local option tax is imposed an estimate of the tax moneys each city or county will receive for the year and for each month of the year. At the end of each month, the director may revise the estimates for the year and remaining months. The director shall remit 95 percent of the estimated monthly tax receipts for the city or county to the city or county on or before August 31 of the fiscal year and the last day of each month thereafter. The director shall remit a final payment of the remainder of tax money due to the city or county for the fiscal year before November 10 of the next fiscal year. If an overpayment has resulted during the previous fiscal year, the first payment of the new fiscal year shall be adjusted to reflect any overpayment. An adjustment for an overpayment which resulted in a previous year will be reflected beginning with the November payment. The shares are to be remitted to the board of supervisors if the tax is imposed in the unincorporated areas of the county, and to each city where the tax is imposed.

Each county's account is to be proportionately distributed to participating governments 75 percent on the basis of the most recent certified federal census population, and 25 percent on the basis of the sum of property tax dollars levied by participating boards of supervisors or by cities for the three years from July 1, 1982, through June 30, 1985.

"The most recent certified federal census" is the final count from the most recent decennial census conducted by the United States Department of Commerce, Bureau of the Census, as modified by subsequent certifications from the United States Bureau of the Census. If a subsequent certified census occurs which modifies the "most recent certified federal census" for a participating jurisdiction, then the formula set forth in this rule for computations for distribution of the tax shall reflect any population adjustments reported by the subsequent certified census.

The "sum of property tax dollars levied" by boards of supervisors or city councils for the three years from July 1, 1982, through June 30, 1985, is the amount obtained by using data from county tax rate reports and city tax rate reports compiled by the office of management.

Division of the amount from each county's account to be distributed is done with these steps.

1. The total amount in the county's account to be distributed is first divided into two parts. One part is equal to 75 percent of the total amount to be distributed. The second part is the remainder to be distributed.

2. The part comprised of 75 percent of the total receipts to be distributed is further divided into an amount for each participating city or unincorporated area. This division is based upon the most recent certified federal census population and any subsequent certified census. Population for each participating city and unincorporated area is determined separately and totaled. The population for each sales tax imposing city or unincorporated area is divided by the total population to produce a percentage for each city or the unincorporated area. The percentages are rounded to the nearest one-hundredth of a percent with the total of all percentages equal to 100 percent. Each government's percentage is multiplied by 75 percent of the sales tax receipts to be distributed. Distributions are to be rounded to the nearest cent.There are two types of certified federal censuses. The first is the usual decennial census which is always conducted throughout the entire area of any county imposing a local option sales tax.

The second type of certified federal census is the "interim" or "subsequent" census which is conducted between decennial censuses. An interim or subsequent census is not necessarily conducted within an entire county but may be used to count increases or decreases in only one or some of the jurisdictions within that county, for instance, one particular municipality. If an interim census is conducted within only certain participating jurisdictions of a county where a local option sales tax is imposed, the changes in population which that census reflects must be included within both the numerator and the denominator of the fraction which is used to compute the participating jurisdiction's share of the revenue from the county's account which is based on county population. See 1996 O.A.G. 10-22-96 (Miller to Richards). See also Example 3 of this rule for a demonstration of how an interim census can affect a population distribution formula.

3. The remaining 25 percent of the amount to be distributed is further divided based upon property taxes levied. The sum of property tax dollars to be used is the amount levied for the three years from July 1, 1982, through June 30, 1985. Property taxes levied by participating cities or the board of supervisors, if the local sales tax is imposed in unincorporated areas, are to be determined separately then totaled. The property tax amount for each sales tax imposing city and the board of supervisors, if the sales tax is imposed in unincorporated areas, is divided by the totaled property tax to produce a percentage. The percentages are rounded to the nearest one-hundredth of a percent with the total of all percentages equal to 100 percent. Each percentage is multiplied by 25 percent of the sales tax receipts to be distributed. Distributions are to be rounded to the nearest cent.

4. For each participating city, or the board of supervisors if unincorporated areas of the county participate, the amount determined in "3" is added to the amount found in "2." This amount is then to be remitted to the appropriate local government.

In order to illustrate the division of local option sales and service tax receipts, the following examples are provided. The numbers are shown in an attempt to reflect reality but are hypothetical.

EXAMPLE 1. If a local option sales tax is approved for all of Pottawattamie County, the distribution of $100,000 in countywide receipts would be made in this manner:

Step 1:

Distribution Basis	Amount
Population	$ 75,000.00
Property Taxes Levied	25,000.00
Total	$100,000.00

Step 2:

	Certified Population		Receipts to be
Jurisdiction	Number	Percentage	Distributed
Avoca	1,650	1.91%	$ 1,432.50
Carson	716	0.83%	622.50
Carter Lake	3,438	3.98%	2,985.00
Council Bluffs	56,449	65.30%	48,975.00
Crescent	547	0.63%	472.50
Hancock	254	0.29%	217.50
Macedonia	279	0.32%	240.00
McClelland	177	0.20%	150.00
Minden	419	0.49%	367.50
Neola	839	0.97%	727.50
Oakland	1,552	1.80%	1,350.00
Treynor	981	1.13%	847.50
Underwood	448	0.52%	390.00
Walnut	897	1.04%	780.00
Unincorporated	17,796	20.59%	15,442.50
Total	86,442	100.00%	$75,000.00

NOTE: The portion of the city of Shelby in Pottawattamie County is excluded.
Step 3:

	Three-Year Total Taxes Levied		Receipts to be
Jurisdiction	Amount	Percentage	Distributed
Avoca	$454,556	0.82%	$ 205.00
Carson	202,882	0.37%	92.50
Carter Lake	946,026	1.71%	427.50
Council Bluffs	30,290,732	54.81%	13,702.50
Crescent	7,732	0.01%	2.50
Hancock	56,705	0.10%	25.00
Macedonia	64,504	0.12%	30.00
McClelland	24,300	0.04%	10.00
Minden	155,112	0.28%	70.00
Neola	206,560	0.38%	95.00
Oakland	319,153	0.58%	145.00
Treynor	346,849	0.63%	157.50

Jurisdiction	Three-Year Total Taxes Levied Amount	Percentage	Receipts to be Distributed
Underwood	139,571	0.25%	62.50
Walnut	264,145	0.48%	120.00
Unincorporated	21,782,457	39.42%	9,855.00
Total	$55,262,284	100.00%	$25,000.00

Step 4:

Jurisdiction	Amount to be Distributed By Population	By Taxes	Total Distribution
Avoca	$ 1,432.50	$ 205.00	$ 1,637.50
Carson	622.50	92.50	715.00
Carter Lake	2,985.00	427.50	3,412.50
Council Bluffs	48,975.00	13,702.50	62,677.50
Crescent	472.50	2.50	475.00
Hancock	217.50	25.00	242.50
Macedonia	240.00	30.00	270.00
McClelland	150.00	10.00	160.00
Minden	367.50	70.00	437.50
Neola	727.50	95.00	822.50
Oakland	1,350.00	145.00	1,495.00
Treynor	847.50	157.50	1,005.00
Underwood	390.00	62.50	452.50
Walnut	780.00	120.00	900.00
Unincorporated	15,442.50	9,855.00	25,297.50
Total	$75,000.00	$25,000.00	$100,000.00

EXAMPLE 2. If a local option sales tax is approved for Avoca, Oakland and Treynor in Pottawattamie County and $10,000 is to be distributed, the distribution would be made in this manner:

Step 1:

Distribution Basis	Amount
Population	$ 7,500.00
Property Taxes Levied	2,500.00
Total	$10,000.00

Step 2:

Jurisdiction	Certified Population Number	Percentage	Receipts to be Distributed
Avoca	1,650	39.45%	$2,958.75
Oakland	1,552	37.10%	2,782.50
Treynor	981	23.45%	1,758.75
Total	4,183	100.00%	$7,500.00

Step 3:

	Three-Year Total Taxes Levied		Receipts to be
Jurisdiction	**Amount**	**Percentage**	**Distributed**
Avoca	$ 454,556	40.56%	$1,014.00
Oakland	319,153	28.48%	712.00
Treynor	346,849	30.96%	774.50
Total	$1,120,558	100.00%	$2,500.00

Step 4:

	Amount to be Distributed		Total
Jurisdiction	**By Population**	**By Taxes**	**Distribution**
Avoca	$2,958.75	$1,014.00	$ 3,972.75
Oakland	2,782.50	712.00	3,494.50
Treynor	1,758.75	774.00	2,532.75
Total	$7,500.00	$2,500.00	$10,000.00

EXAMPLE 3. For the purposes of understanding this example, assume that the numbers for "certified population" from Step 2 of Example 2 immediately above are derived from the 1990 decennial census. Assume further that in 1993 an interim census is conducted by the Bureau of the Census in Avoca and Oakland only, and nowhere else in Pottawattamie County. As a result of that interim census, the Bureau of the Census certifies the population of Avoca to be 1,752 and the population of Oakland to be 1,493. The towns' percentages of receipts to be distributed are recomputed in the following manner:

$$\text{Avoca's Percentage Equals } \frac{1752}{1752 + 1493 + 981} = 41.45\%$$

$$\text{Oakland's Percentage Equals } \frac{1493}{1493 + 1752 + 981} = 35.32\%$$

Amounts in Step 2 are then revised as follows:

	Certified Population		Receipts to be
Jurisdiction	**Number**	**Percentage**	**Distributed**
Avoca	1,752	41.46%	$3,109.50
Oakland	1,493	35.33%	2,649.75
Treynor	981	23.21%	1,740.75
Total	4,226	100.00%	$7,500.00

The "amount to be distributed by population" found in Step 4 of Example 2 would then be recomputed based on the new figures.

Rule 107.10(422B) is intended to implement Iowa Code section 422B.10 as amended by 2002 Iowa Acts, House File 2622, section 12.

701—107.11(422B) Procedure if county of receipt's origins is unknown. If the director is unable to determine from which county gross receipts were collected, those receipts shall be allocated among the various counties in which local option sales and service tax is imposed according to the following procedure:

1. The calculations performed under this procedure shall be performed at least quarterly, but in no event less often than the treasurer of the state is obligated to distribute shares of each county's account in the local sales and service tax fund.

2. The total amount of receipts for which the director is unable to determine a county of collection which have accumulated since the last allocation of these receipts shall be added together to form one lump sum.

3. The amount of population (according to the most recent certified federal census) within the areas of each individual county in which a local option sales and service tax is imposed shall be determined.

4. The amount of population so determined in "3" above for each county shall be added to the amount for every other county in Iowa in which the local option sales and service tax is imposed, until the figure for the amount of population of all areas of Iowa in which the local option sales and service tax is imposed is determined.

5. The sum determined to exist in "2" above shall be multiplied by a fraction, the numerator of which is the population of any one county determined in "3" above and the denominator of which is the number calculated by the method described in "4." The procedure described herein in "5" shall be used until the amount of tax due to every county imposing local option sales and service tax is calculated. After calculations are complete, the treasurer of the state must distribute shares of each county's account in the local sales and service tax fund. See rule 107.10(422B) for characterization of the term "most recent certified federal census" and for methods of rounding off percentages and monetary sums.

This rule is intended to implement Iowa Code subsection 422B.10(1).

701—107.12(422B) Computation of local option tax due from mixed sales on excursion boats. Particular difficulties exist in calculating the amount of local option sales tax due for sales occurring on an excursion gambling boat sailing into and out of jurisdictions imposing the local option sales tax. Ordinarily, local option sales tax is payable if tangible personal property is delivered under a contract for sale or if taxable services are rendered, furnished, or performed within that portion of a county where a tax is imposed. However, it can be quite difficult to determine if a moving excursion gambling boat is at any one point in time within or outside of a jurisdiction imposing the local option tax. Thus, it is difficult to determine if a delivery of property or provision of a service on the boat has occurred inside or outside of a local option tax jurisdiction. Because of this, the department will accept the use of any formula which rationally apportions the progress of an excursion gambling boat among jurisdictions which impose a local option tax and those that do not.

Below are four examples setting out two possible formulas for apportionment. Examples A and C utilize a "distance" formula for apportionment. Examples B and D utilize a "time" formula for apportionment. In Examples A and B, state sales tax is included in the sale price of the taxable items. In Examples C and D, state sales tax is added to taxable gross receipts. In all examples, local option sales tax is included in the sales price; also, for every example, it is assumed that the local option sales tax rate is 1 percent in every jurisdiction where it is imposed.

EXAMPLE A. The "Auric" is based in Clinton. Assume that during a particular cruise there occurs $10,000 worth of vending machine and nongambling game sales. State sales tax and local option tax must be included in the amounts charged for these vending machine and nongambling game sales. Assume that the Auric, on an ordinary cruise, travels round trip for 50 miles on the Mississippi River, 25 of those miles through waters which are part of a local option sales tax jurisdiction and 25 of those miles which are not. The amount of state sales tax due and the amount of local option sales tax due using a "distance" apportionment formula are determined as follows:

Computation of state sales tax due

1. $10,000 ÷ 1.04 = $9,615.38
2. $10,000 — $9,615.38 = $384.62 = amount of state sales tax due

Computation of local option tax due

1. $9,615.38 ÷ 1.01 = $9,520.18
2. $9,615.38 — $9,520.18 = $95.20
3. $95.20 × ½ = $ 47.60 = amount of local option sales tax due

EXAMPLE B. The gambling excursion boat "Blue Diamond" is based in Davenport. Assume that, as in Example A, during a particular cruise there occurs $10,000 worth of vending machine and nongambling game sales. Again, state sales tax and local option tax are included in the amounts charged

for these vending machine and nongambling game sales. The Blue Diamond spends three hours on the water during an ordinary cruise. One hour is spent sailing in waters where no local option sales tax is imposed; two hours are spent in waters where the local option tax is imposed. In this case, the Blue Diamond's operator can use a formula based on time spent sailing inside and outside of a local option tax-imposing jurisdiction rather than distance traveled within and without such a jurisdiction as in Example A, so long as there is a reasonable amount of evidence to indicate that the formula reflects with some accuracy the ratio of nontaxable and taxable sales. In this case, all calculations are the same as those performed in Example A, except that the last calculation is performed as follows:

$95.20 × 2/3 = $63.40 = amount of local option sales tax due

EXAMPLE C. The excursion gambling boat "Golconda" is based in Dubuque, Iowa. On an ordinary cruise, it will travel a round trip of 50 miles on the Mississippi River. During 25 of those 50 miles the Golconda is passing through waters which are part of a local option sales tax jurisdiction. Assume that on one particular cruise, $100,000 in taxable gross receipts is collected on the boat. Local option sales tax is included in the $100,000 amount but not state sales tax. Thus, the total amount collected is $104,000; $100,000 in gross receipts, $4,000 in state sales tax. Local option tax is calculated as follows: Divide $100,000 by 1.01. This result is $99,009.90. Subtract this from $100,000 leaving $990.10. $990.10 is the amount of local option tax which would be due if all sales during the cruise had occurred in a jurisdiction imposing a local option tax. Since only half the distance traveled was in a jurisdiction imposing the tax, $990.10 is multiplied by .5 to discover the amount of local option tax due ($495.05).

EXAMPLE D. The gambling excursion boat "Black Jack" is based in Davenport. Assume that during a particular cruise there is $150,000 in taxable gross receipts collected on the Black Jack. The full amount collected is $156,000; $6,000 in state sales tax and $150,000 in gross receipts. The Black Jack spends three hours on the water during an ordinary cruise. One hour is spent sailing in waters where no local option sales tax is imposed; two hours are spent in waters where the local option tax is imposed. In this case, as in Example B, the Black Jack's operator can use a formula based on time spent sailing inside and outside of a local option tax-imposing jurisdiction rather than distance traveled within and without such a jurisdiction so long as there is a reasonable amount of evidence to indicate that the formula reflects with some accuracy the ratio of nontaxable and taxable sales. In this example tax is computed as follows:

1. $150,000 ÷ 1.01 = $148,514.85
2. $150,000 — $148,514.85 = $1,485.15
3. $1,485.15 × 2/3 = $989.11 = amount of tax due

Upon beginning operation, a licensee may choose to employ either the "distance" method of apportionment set out in Examples A and C or the "time" method set out in B and D above without informing the department in advance of filing a sales tax return of its choice. A licensee cannot use both methods of apportionment. If a licensee commencing operation wishes to use another method of apportionment, the licensee must petition the department for permission to use this alternative method, and present whatever evidence the department shall rationally require that the alternative method better reflects the ratio of taxable to nontaxable sales before using the alternative method. Any licensee wishing to change from any existing method of apportionment to another method must also petition the department and receive permission to change its method of apportionment.

This rule is intended to implement Iowa Code sections 99F.10(6) and 422B.8.

701—107.13(421,422B) Officers and partners, personal liability for unpaid tax. If a retailer or purchaser fails to pay local option sales tax when due for taxes due and unpaid on and after July 1, 1990, any officer of a corporation or association, or any partner of a partnership, who has control of, supervision of, or the authority for remitting local option sales tax payments and has a substantial legal or equitable interest in the ownership of the corporation or partnership is personally liable for payment of the tax, interest, and penalty if the failure to pay the tax is intentional. This personal liability is not applicable to local option tax due and unpaid on accounts receivable. The dissolution of a corporation, association, or partnership does not discharge a responsible person's liability for failure to pay tax. See

rule 701—12.15(422,423) for a description of various criteria used to determine personal liability and for a characterization of the term "accounts receivable."

This rule is intended to implement Iowa Code section 421.26 and chapter 422B.

701—107.14(422B) Local option sales and service tax imposed by a city.

107.14(1) On or before January 1, 1998, a city may impose by ordinance of its council a local sales and service tax if all of the following circumstances exist:

a. The city's corporate boundaries include areas of two Iowa counties.

b. All the residents of the city live in one county as determined by the latest federal census preceding the election described in paragraph *"c"* immediately below. Effective May 20, 1999, at least 85 percent of the residents of the city must live in one county to qualify.

c. The county in which the city's residents reside has held an election on the questions of the imposition of a local sales and service tax and a majority of those voting on the question in the city favored its imposition. Effective May 20, 1999, the city residents must live in the county and have held an election on the question of the imposition of the local sales and service tax and a majority of those voting on the question in the city favored its imposition.

d. The city has entered into an agreement on the distribution of the sales and service tax revenues collected from the area where the city tax is imposed with the county where such area is located.

107.14(2) Imposition of the tax is subject to the following restrictions:

a. The tax shall only be imposed in the area of the city located in the county where none of its residents reside. Effective May 20, 1999, the tax shall only be imposed in the area of the city located in the county where not more than 15 percent of the city's residents reside.

b. The tax shall be at the same rate and become effective at the same time as the county tax imposed in the other area of the city.

c. The tax once imposed shall continue to be imposed until the county-imposed tax is reduced or increased in rate or repealed, and then the city-imposed tax shall also be reduced or increased in rate or repealed in the same amount and be effective on the same date.

d. The tax shall be imposed on the same basis as provided in rule 107.9(422B).

e. The city shall assist the department of revenue to identify the businesses in the areas which are to collect the city-imposed tax. The process shall be ongoing as long as the city tax is imposed.

f. The agreement on the distribution of the revenue collected from the city-imposed tax shall provide that 50 percent of such revenue shall be remitted to the county in which the part of the city where the city tax is imposed is located.

This rule is intended to implement Iowa Code chapter 422B as amended by 1999 Iowa Acts, chapter 156, sections 5 and 6.

701—107.15(422B) Application of payments. Since a combined state sales and local option return is utilized by the department, all payments received will be applied to satisfy state sales tax and local option sales and service tax, which include tax, penalty and interest. Application of payments received with the tax return and any subsequent payments received will be applied based on a ratio formula, unless properly designated by the taxpayer as provided in Iowa Code section 421.60(2)*"d."* The ratio for applying all payments received with the return and all subsequent payments for the given tax period will be based upon the calculated total of state sales and local option sales and service tax due for the given tax period in relation to combined total payment of sales and local option sales and service tax actually received for that tax period.

This rule is intended to implement Iowa Code Supplement section 422B.10.

701—107.16(422B) Construction contractor refunds. Construction contractors may apply to the department for a refund of local option tax paid on goods, wares, or merchandise based on certain conditions.

107.16(1) Conditions for refund. All of the following conditions must be met before a contractor is eligible to claim a local option tax refund:

a. The goods, wares or merchandise is incorporated into an improvement to real estate in fulfillment of a written contract fully executed prior to the date of the imposition or increase in rate of the local option tax. The refund shall not apply to equipment transferred in fulfillment of a mixed contract.

b. The contractor has paid to the department or to a retailer the full amount of the state and local option tax.

c. Prior to July 1, 2001, the claim must be filed on forms provided by the department and must be filed within six months of the date the tax is paid. Effective July 1, 2001, the claim for refund must be filed with the department within one year from the date the tax is paid.

107.16(2) The refund must be paid by the department from the appropriate city or county account in the local option tax fund.

107.16(3) Erroneous and false refund claims. A contractor who makes an application for refund that is in error is liable for payment of the excess refund paid plus interest as set forth in Iowa Code section 421.7.

For collection of payments under this rule, see Iowa Code section 422B.11.

This rule is intended to implement Iowa Code section 422B.11 as amended by 2001 Iowa Acts, House File 715, section 15.

[1]**701—107.17(422B,422E) Discretionary application of local option tax revenues.** Effective July 1, 2001, the governing authority of the local option jurisdiction or school board has the discretion to determine whether revenues received from local option tax are to be applied to bond obligations as provided in Iowa Code section 76.4 as amended by 2001 Iowa Acts, House File 739.

This rule is intended to implement Iowa Code section 76.4 as amended by 2001 Iowa Acts, House File 739.

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[1] At its meeting held October 9, 2000, the Administrative Rules Review Committee delayed the effective date of 107.16 until adjournment of the 2001 Session of the General Assembly.

CHAPTER 108
LOCAL OPTION SCHOOL INFRASTRUCTURE SALES AND SERVICE TAX

These rules govern school infrastructure local option sales and services taxes voted on and approved prior to April 1, 2003. For school infrastructure local option sales and services taxes voted on and approved on or after April 1, 2003, see 701—Chapter 109.

701—108.1(422E) Definitions. The following words and terms are used in the administration of the local option school infrastructure sales and service tax:

"County" means an involuntary political or civil division of the state, created by general statute, to aid in the administration of government and is simply a governmental auxiliary. *Shirkey v. Keokuk County*, 275 N.W. 706, 712, 225 Iowa 1159 (1938). A county is generally known to include a designated geographic area which may comprise municipalities, cities, or towns.

"Department" means the Iowa department of revenue.

"Director" means the director of the Iowa department of revenue.

"Sale" means the same as defined in 701—107.1(422B).

"School district" means a school corporation that has exclusive jurisdiction in all school matters over a designated geographic area. See Iowa Code section 274.1.

"School infrastructure" means those activities for which a school district is authorized to contract indebtedness and issue general obligation bonds under Iowa Code section 296.1. Qualifying activities include construction, reconstruction, repair, purchasing, or remodeling of schoolhouses, stadiums, gyms, fieldhouses, or bus garages. School infrastructure activities also include the procurement of schoolhouse construction sites and making site improvements. Additional qualifying activities include the payment or retirement of outstanding bonds previously issued for school infrastructure purposes as defined in this rule and the payment or retirement of such bonds.

However, "school infrastructure" does not include activities related to a teacher's or superintendent's home or homes.

This rule is intended to implement Iowa Code chapter 422E.

701—108.2(422E) Authorization, rate of tax, imposition, use of revenues, and administration.

108.2(1) *Authorization and imposition.* Effective April 20, 1998, a local option school infrastructure sales and service tax will only be imposed after an election in which a majority of those voting on the question favors the imposition of the tax. A local option school tax that has been approved by an election will be applied to all incorporated and unincorporated areas of that county. A request for the local option school tax may be made either by the county or a school district which contains at least 50 percent of the county population in which it is located. Each type of request has specific requirements for proposing the tax under this chapter. The requirements are set forth as follows:

a. *Imposition by county.* A petition must be submitted to a county board of supervisors requesting imposition of a local school infrastructure sales and service tax. To qualify, the petition must be signed by eligible voters of the whole county in a number equal to 5 percent of the persons in the whole county who voted in the last preceding state general election. Within 30 days of receiving the petition, the county board of supervisors must inform the county commissioner of elections to submit the question of imposing the tax to the registered voters of the whole county.

b. *Imposition by school district.* A motion or motions requesting the question of imposing a local option school infrastructure sales and service tax may be proposed and adopted by the governing body of a school district or school districts located within a county. To qualify for imposing this tax, a school district located within a county must contain a total, or a combined total in the case of more than one school district, of at least 50 percent of the population of the county. Upon adoption of the motion, the governing body of a school district must notify the county board of supervisors of the adoption of the motion. A motion is no longer valid at the time of the regular election of members of the governing body which adopted the motion. The county board of supervisors must then submit the motion to the

county commissioner of elections, who will publish the notice of the ballot proposition regarding the local option school infrastructure sales and service tax.

108.2(2) *Ballot proposition—procedure for imposition of the tax whether by county or the school district.* A county commissioner for elections must submit the question for imposing the tax under this chapter at a state general election or a special election held at any time other than the time of a city regular election. The election cannot be sooner than 60 days after publication of the notice of the ballot proposition. The ballot proposition must be in the form established by the state commissioner of elections. For additional information regarding the form and content of the ballot proposition, see 721—21.803(77GA,HF2282).

108.2(3) *Tax rate, election, and repeal.* The maximum rate of tax imposed under this rule shall be 1 percent. The tax shall be imposed without regard to any other local sales and service tax authorized under the Iowa Code. The rate of tax may be increased up to 1 percent, decreased, or repealed after an election in which a majority of those voting are in favor of the question of rate change or repeal of the tax. However, the tax cannot be repealed before the tax has been in effect for one year.

The election for a change in the tax rate or repeal of the tax may be called and held under the same conditions as previously set forth for the election imposing the tax. The election may be held not sooner than 60 days following the publication of the notice of the ballot proposition.

Local option school infrastructure sales and service tax is automatically repealed at the expiration of ten years from the date of imposition or a shorter period provided in the ballot proposition.

A local option school infrastructure sales and service tax cannot be repealed or reduced in rate if bond obligations are outstanding unless sufficient funds to pay the principal, interest, and premium, if any, on the outstanding obligation at and prior to maturity have been properly set aside and pledged for that purpose.

For elections held on or after April 1, 2000, the tax may only be imposed with an effective date of either January 1 or July 1, but not sooner than 90 days following the favorable election.

For elections held on or after April 1, 2000, this tax shall be repealed on either June 30 or December 31, but not sooner than 90 days following a favorable election if one is held. If a tax has been imposed prior to April 1, 2000, and at the time of the election a date for repeal was specified on the ballot, the tax may be repealed on that date despite the previously mentioned dates set forth.

108.2(4) *Use of revenues.* Local option sales and service tax revenues received under this chapter shall be used for infrastructure purposes as defined in rule 701—108.1(422E). In addition, certain cities may obtain revenues from the local option school tax. A school district in a county that has imposed this tax may enter into an Iowa Code chapter 28E agreement with a city or cities whose boundaries encompass all or a part of the school district; the city may then receive a portion of the revenues from this tax as determined by the 28E agreement. A city may utilize revenues from this tax for school infrastructure purposes or any valid purposes authorized by the governing board of the city.

108.2(5) *Notice of election results.* The county auditor must give written notice by certified mail to the director of the results of an election in which a majority of those voting on the question favors the imposition, repeal, or change in the rate of the tax, within ten days of the date of the election. This written notice must consist of a copy of the abstract of votes from the favorable election. For a definition of "abstract of votes" see 721—subrule 21.803(4).

108.2(6) *Administration of the tax.* The local option school infrastructure sales and service tax is to be imposed on the gross receipts of sales of tangible personal property sold within the local option jurisdiction and upon the gross receipts from services rendered, furnished, or performed within the local option jurisdiction. This tax may only be imposed by a county in the manner set forth previously in this rule. The tax may not be imposed on any transaction not subject to state sales tax. Effective May 1, 1999, transactions involving the use of natural gas, natural gas services, electricity or electric service are subject to a local excise tax that is to be imposed on the same basis as the state use tax, unless the sale or use involved in such transactions is subject to a franchise fee or user fee during the period the franchise fee or user fee is imposed. Except as otherwise provided in this chapter, all references to local option school infrastructure tax also include local excise tax and all rules governing the administration and collection of local option school infrastructure tax are also applicable to local excise tax. For further details, see

701—108.5(422E). With the exception of the natural gas and electric related transactions previously mentioned, there is no local option use tax. See rule 701—14.2(422,423) for a tax table setting forth the combined rate for a state sales tax of 5 percent and the local sales tax rate of 1 percent. Frequency of deposits and quarterly reports of local option tax filed with the department of revenue are governed by the retail sales tax provisions found in Iowa Code section 422.52. Local option tax collections shall not be included in the computation of the total tax to determine the frequency of the filing under Iowa Code section 422.52.

Prior to April 1, 2000, a local option school infrastructure tax cannot be imposed until 40 days after there has been a favorable election to impose the tax. All local option school infrastructure tax must be imposed January 1, April 1, July 1, or October 1. The tax can be repealed only on March 31, June 30, September 30, or December 31. However, this tax must not be repealed before the tax has been in effect for one year. For imposition and repeal date restrictions on or after April 1, 2000, see subrule 108.2(3).

This rule is intended to implement Iowa Code Supplement section 422E.2 as amended by 2000 Iowa Acts, House File 2136, section 37.

701—108.3(422E) Collection of the tax. After a majority vote favoring the imposition of the tax under this chapter, the county board of supervisors shall impose the tax at the rate specified and for a duration not to exceed ten years or less as specified on the ballot. To determine the amount of tax to be imposed on a sale, the taxable amount must not include any state gross receipts taxes or any other local option taxes. A retailer need only have a state tax permit to collect the local option sales and service tax under this chapter. This tax is to be imposed and collected in the following manner:

1. Sale of tangible personal property. This local option sales and service tax is imposed on the gross receipts from "sales" of tangible personal property in which delivery occurs within a jurisdiction imposing the tax. Department rule 701—107.3(422B), which governs transactions subject to and excluded from local option sales tax, is applicable to and governs transactions subject to tax under this chapter as well. As a result, the text of 701—107.3(422B) is incorporated by reference into this chapter.

2. The sale of enumerated services. Department rules 701—107.4(422B), 701—107.5(422B), and 701—107.6(422B), which govern transactions subject to and excluded from local option service tax, single contracts for taxable services performed partly within and partly outside of an area of a county imposing the local option service tax, and motor vehicle, recreational vehicle, and recreational boat rentals subject to local option service tax, respectively, are applicable to and govern transactions subject to tax under this chapter. As a result, the text of 701—107.4(422B), 701—107.5(422B), and 701—107.6(422B) is incorporated by reference into this chapter.

This rule is intended to implement Iowa Code section 422E.3.

701—108.4(422E) Similarities to the local option sales and service tax imposed in Iowa Code chapter 422B and 701—Chapter 107. The administration of the tax imposed under this chapter is similar to the local option tax imposed under Iowa Code chapter 422B and 701—Chapter 107. As a result, a few of the rules set forth in 701—Chapter 107 are also applicable and govern the local option sales and service school infrastructure tax as well. Accordingly, the following rules are incorporated by reference into this chapter and will govern their respective topics in relation to the local option sales and service school infrastructure tax:

1. 701—paragraph 107.2(2)*"a"* Continuation of local option tax.
2. 701—107.7(422B) Special rules regarding utility payments.
3. 701—107.8(422B) Contacts with county necessary to impose collection obligation upon a retailer.
4. 701—107.9(422B,422E) Sales not subject to local option tax, including transactions subject to Iowa use tax.
5. 701—107.12(422B) Computation of local option tax due from mixed sales on excursion boats.
6. 701—107.13(421,422B) Officers and partners, personal liability for unpaid tax.
7. 701—107.15(422B) Application of payments.

8. 701—107.17(422B,422E) Discretionary application of local option tax revenues.

This rule is intended to implement Iowa Code sections 76.4 as amended by 2001 Iowa Acts, House File 739, and 422E.3 as amended by 2001 Iowa Acts, House File 715, section 16.

701—108.5(422E) Sales not subject to local option tax, including transactions subject to Iowa use tax. The local option sales and service tax for school infrastructure is imposed upon the same basis as the Iowa state sales and service tax. However, like the local option sales and service tax set forth in Iowa Code chapter 422B and department rule 701—107.9(422B), there are sales and services that are subject to Iowa state sales tax, but such sales or services are not subject to local option sales and service tax. Department rule 701—107.9(422B), which governs the sales not subject to local option sales and service tax pursuant to Iowa Code section 422B.8, is incorporated by reference into this chapter and will govern the local option sales and service tax for school infrastructure tax with the following exception:

For transactions prior to May 1, 1999. The gross receipts from the sale of natural gas or electricity in a city or county which are subject to a franchise or user fee are not exempt from the local option school infrastructure sales and service tax.

Effective May 1, 1999, transactions involving the use of natural gas, natural gas services, electricity or electric service are subject to a local excise tax that is to be imposed on the same basis as the state use tax, unless the sale or use involved in such transactions is subject to a franchise fee or user fee during the period the franchise fee or user fee is imposed. Except as otherwise provided in this chapter, all references to local option school infrastructure tax also include local excise tax, and all rules governing the administration and collection of local option school infrastructure tax are also applicable to local excise tax. With the exception of the natural gas and electric related transactions previously mentioned, there is no local option use tax.

This rule is intended to implement Iowa Code section 422E.1 as amended by 1999 Iowa Acts, chapter 151, section 36, and Iowa Code section 422E.3 as amended by 1999 Iowa Acts, chapter 151, sections 37 and 38.

701—108.6(422E) Deposits of receipts. The director of revenue shall credit tax receipts, interest, and penalties from the tax under this chapter. If the director is unable to determine from which county any of the receipts from this tax were collected, those receipts shall be allocated among the possible counties based on the allocation rules set forth in 701—107.11(422B).

This rule is intended to implement Iowa Code section 422E.3.

701—108.7(422E) Local option school infrastructure sales and service tax payments to school districts. The director of revenue within 15 days of the beginning of each fiscal year shall send to each school district where the local option school infrastructure sales and service tax is imposed an estimate of the tax moneys each school district will receive for the year and for each month of the year. For periods after July 1, 2002, the director of revenue shall by August 15 of each fiscal year send to each school district where the local option school infrastructure sales and service tax is imposed an estimate of the tax moneys each school district will receive for the year and for each month of the year. At the end of each month, the director may revise the estimates for the year and remaining months. The director shall remit 95 percent of the estimated monthly tax receipts for the school district to the school district on or before August 31 of the fiscal year and the last day of each month thereafter. The director shall remit a final payment of the remainder of tax money due for the fiscal year before November 10 of the next fiscal year. If an overpayment has resulted during the previous fiscal year, the first payment of the new fiscal year shall be adjusted to reflect any overpayment. An adjustment for an overpayment that has resulted during the previous fiscal year will be reflected beginning with the November payment.

If more than one school district or a portion of a school district is located within the county, tax receipts shall be remitted to each school district or portion of a school district in which the county tax is imposed in a pro-rata share based upon the ratio which the percentage of actual enrollment for the school district that attends school in the county bears to the percentage of the total combined actual enrollments

for all school districts that attend school in the county. A student's enrollment is based on the residency of the student. The formula to compute this ratio is the following:

$$\frac{\text{actual enrollment for the school district at issue}}{\text{combined actual enrollment for the county}}$$

The combined actual enrollment for the county, for purposes of this tax, shall be determined for each county imposing the tax under this rule by the Iowa department of management based on the actual enrollment figures reported by October 1 of each year to the department of management by the department of education pursuant to Iowa Code section 257.6(1). Enrollment figures to be used for the purpose of this formula are the enrollment figures reported by the department of education for the fiscal year preceding the date of implementation of the local option school infrastructure sales and service tax.

EXAMPLE: In November of 1999, Polk County holds a valid election that results in a favorable vote to impose the local option school infrastructure sales and service tax. The tax will be implemented in Polk County on July 1, 2000. The fiscal year preceding the implementation of the tax is July 1, 1999, through June 30, 2000. To determine the proper ratio of funds to be distributed to the multiple school districts located in Polk County, the enrollment figures reported by the department of education to the department of management by October of 1999 must be obtained to compute the formula as set forth.

For additional information regarding the formula for tax revenues to be distributed to the school districts, see the department of education's rules regarding this tax under 281—Chapter 96, Iowa Administrative Code.

This rule is intended to implement Iowa Code section 422E.3 as amended by 2002 Iowa Acts, House File 2622, section 13.

701—108.8(422E) Construction contract refunds. Effective May 20, 1999, and retroactively applied to July 1, 1998, construction contractors may apply to the department for a refund of local option school infrastructure tax paid on goods, wares, or merchandise if the following conditions are met:

1. The goods, wares or merchandise are incorporated into an improvement to real estate in fulfillment of a written contract fully executed prior to the date of the imposition or increase in rate of the local option school infrastructure tax. The refund shall not apply to equipment transferred in fulfillment of a mixed contract.
2. The local option school infrastructure tax must have been effective in the jurisdiction on or after July 1, 1998.
3. The contractor has paid to the department or to a retailer the full amount of the state and local option tax.
4. The claim is filed on forms provided by the department and is filed within six months of the date the tax is paid.

The refund shall be paid by the department from the appropriate school district's account in the local sales and services tax fund.

The penalty provisions contained in Iowa Code section 422B.11(3) apply regarding erroneous application for refund of tax under this chapter.

This rule is intended to implement Iowa Code section 422E.3 as amended by 1999 Iowa Acts, chapter 156, section 19.

701—108.9(422E) 28E agreements. A school district which has imposed the tax under this chapter has the authority to enter into an agreement authorized and defined in Iowa Code chapter 28E with one or more cities whose boundaries encompass all or a part of the area of the school district. Such an agreement will set forth a designated amount of revenues from the tax imposed under this chapter that a city or each city may receive. A city or cities entering into an Iowa Code chapter 28E agreement is authorized to expend its designated portion of taxes imposed under this chapter for any valid purpose permitted and defined under this chapter as a school infrastructure purpose or for any purpose authorized by the governing body of the city.

Effective May 20, 1999, and for taxes imposed under this chapter on or after July 1, 1998, a county whose boundaries encompass all or a part of an area of a school district may enter into an Iowa Code chapter 28E agreement with that school district. The terms of the Iowa Code chapter 28E agreement will designate a portion of tax revenues received from the tax imposed under this chapter that a county is entitled to receive. A county entering into an Iowa Code chapter 28E agreement with a school district in which tax under this chapter has been imposed is authorized to expend its designated portion of such tax revenues to provide property tax relief within the boundaries of the school district located in the county.

Effective May 20, 1999, and for taxes imposed under this chapter on or after July 1, 1998, a school district where local option school infrastructure tax is imposed is also authorized to enter into an Iowa Code chapter 28E agreement with another school district which is located partially or entirely in or is contiguous to the county where the tax is imposed. The school district shall only expend its designated portion of the local option school infrastructure revenues for infrastructure purposes.

This rule is intended to implement Iowa Code section 422E.4 as amended by 1999 Iowa Acts, chapter 156, section 20.

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◊ Two or more ARCs

1 At its meeting held October 9, 2000, the Administrative Rules Review Committee delayed the effective date of 108.4“6” until adjournment of the 2001 Session of the General Assembly.

CHAPTER 109
NEW SCHOOL INFRASTRUCTURE LOCAL OPTION SALES AND SERVICES TAX— EFFECTIVE ON OR AFTER APRIL 1, 2003, THROUGH FISCAL YEARS ENDING DECEMBER 31, 2022

These rules govern school infrastructure local option sales and services taxes that are voted on and approved on and after April 1, 2003. Taxes imposed on and after April 1, 2003, automatically expire after ten years of imposition or less if stated in the ballot proposition. Regardless of when the school infrastructure local option sales and services tax was approved, the term, or the date of repeal in a ballot proposition, all school infrastructure local option sales and services taxes will automatically repeal on December 31, 2022.

Payments of the tax revenue under this chapter are based on estimates and projections. Accordingly, if an overpayment of tax to a school district occurs, subsequent payments to that school district will be adjusted to recoup the overpayment.

701—109.1(422E) Use of revenues and definitions.

109.1(1) *Use of revenues.* Revenues from this tax may be used for the following:

a. "School infrastructure needs," which are activities that a school district has authorized by contract of indebtedness and the issuance of general obligation bonds under Iowa Code section 296.1 and payment or retirement of outstanding bonds previously issued for school infrastructure as defined in this chapter. "School infrastructure needs" does not include activities related to a school teacher's or school superintendent's home or homes. Allowed "activities" consist of the following: construction; reconstruction; repair; demolition work; purchases for construction or remodeling of schoolhouses, stadiums, gyms, fieldhouses, and bus garages. Allowed "activities" include all activities in which revenues are allowed to be expended under Iowa Code Supplement section 298.3, which include: purchase and improvement of grounds; construction of schoolhouses or building and opening roads to these facilities; purchase of buildings; purchase, lease or lease-purchase of equipment or technology exceeding $500 value per unit; payment of debts contracted for the erection of schoolhouses or buildings; procuring or acquisition of library facilities; repairing, remodeling, reconstructing, improving, or expanding the schoolhouses or buildings, and any additions to existing schoolhouses; expenditures for energy conservation; rental of facilities under Iowa Code chapter 28E; purchase of transportation equipment for transporting students; lease-purchase agreements for school buildings and equipment exceeding $5,000 per single unit; equipment purchases for recreational purposes; payments to municipalities or other entities as required in Iowa Code section 403.19(2); and activities set forth under the educational and recreational tax as provided in Iowa Code section 300.2.

b. Property tax relief. Revenues from this school infrastructure local option sales and services tax may be used to provide property tax relief.

109.1(2) *Definitions.* The following definitions shall be used in interpreting the rules of this chapter:

"Department" means the Iowa department of revenue.

"Director" means the director of the Iowa department of revenue.

"Guaranteed school infrastructure amount" or *"guaranteed amount or payment"* means an amount of revenues from the school infrastructure local option sales and services tax to be received by a school district based on the statewide tax revenues per student, multiplied by the quotient of the tax rate percentage imposed in the county, divided by 1 percent and multiplied by the quotient of the number of quarters the tax is imposed during the fiscal year, divided by four quarters.

"Sales tax capacity per student" means the estimated amount of revenues that a school district receives or would receive if a school infrastructure local option sales and services tax is imposed at 1 percent in the county pursuant to Iowa Code Supplement section 422E.2, divided by the school district's actual enrollment. Actual enrollment for a school district is obtained from the department of education as provided in 109.4(1).

"Statewide tax revenues per student" currently means $575 per student. The general assembly shall review this amount annually to determine its appropriateness.

"Supplemental school infrastructure amount" or *"supplemental amount"* or *"supplemental payment"* means the guaranteed school infrastructure amount for the school district less its pro-rata share of the school infrastructure local option sales and services tax as provided in 109.4(1).

701—109.2(422E) Imposition of tax. For a school infrastructure local option sales and services tax to be valid, it must be imposed in accordance with the following:

109.2(1) *Petition for the tax.* A petition requesting imposition of the tax must be submitted to the board of supervisors or by motion of a school district or school districts.

109.2(2) *Ballot.* A ballot proposition must be substantially similar to the petition by the board of supervisors or motions of the school district(s). The ballot must include the rate of tax, imposition and repeal date, and the specific purpose or purposes for which the revenues will be expended. The form of the ballot is governed by the state commissioner of elections.

109.2(3) *Publication.* The ballot for the imposition of the tax must be published to notify voters of the desire for the tax and the particulars concerning the tax. The notice consisting of the ballot for the tax must be published at least 60 days prior to the election on imposition of the tax.

109.2(4) *Rate of tax.* The rate of tax must not be more than 1 percent.

109.2(5) *Proposition of the tax.* Only a county commissioner of elections shall submit the question of imposition of the tax to the voters.

109.2(6) *Election.* The election regarding imposition of the tax must be held at least 60 days after publication of the notice of the ballot for this tax. The election must be held at the state general election or a special election. An election regarding imposition of the tax shall not be held at a city regular election.

a. *Election necessary.* Elections are necessary to impose, repeal, or change the rate of the tax, or to change the use in revenues from the tax. Elections for repeal, change in rate, or change in use must be held in the same manner as the election for imposition. If an election is held for change in use of the revenues from the tax, the election must be held only in the school district where the change in use is proposed to occur.

b. *Effective dates.* The following dates govern the imposition and repeal of the tax:

(1) Effective dates must be no sooner than 90 days following the favorable election to approve the tax. The tax may only be imposed with an effective date of January 1 or July 1.

(2) Repeal dates must be no sooner than 90 days following a favorable election to repeal the tax. Repeal must occur on either June 30 or December 31. All school infrastructure local option sales and services tax under this chapter is repealed effective December 31, 2022, regardless of the repeal date in the ballot of the tax. The tax cannot be extended beyond December 31, 2022.

The tax shall not be repealed nor the rate of tax reduced if obligations are outstanding which are payable as provided in Iowa Code Supplement section 422E.4. However, this provision does not apply to the repeal of the tax on December 31, 2022.

c. *Notice of election result.* Within 10 days after the election at which there was a vote favoring imposition, repeal or change in rate, the county auditor must send a written notice of the election results to the director. The notice must be a copy of the abstract of votes from the favorable election.

d. *Election costs.* Cost of an election shall be apportioned among the school districts within the county on a pro-rata basis in proportion to the number of registered voters in each school district who reside within the county and the total number of registered voters within the county.

109.2(7) *Revenue purpose statement.* No later than 60 days prior to the election, each school district located in the county may submit a revenue purpose statement to the county commissioner. The revenue purpose statement states the specific purpose or purposes for which the tax or supplemental amount will be expended. Such purposes are limited to those set forth in 701—109.1(422E). A copy of the revenue purpose statement must be made available for public inspection, posted at the appropriate polling places of each school district during polling hours, and published in a newspaper of general circulation in the school district no sooner than 20 days and no later than 10 days prior to the election on imposition of the tax.

109.2(8) *Lack of a revenue purpose statement or remaining revenues.* If a revenue purpose statement is not filed 60 days prior to the election or if revenues remain after fulfilling the purpose specified in the

revenue purpose statement, the revenues must be used to reduce the following levies in the following order:

a. Bond levies under Iowa Code sections 298.18 and 298.18A and all other debt levies, until the moneys received or the levies are reduced to zero.

b. The regular physical plant and equipment levy under Iowa Code section 298.2 until the moneys received or the levy is reduced to zero.

c. The voter-approved physical plant and equipment levy and income surtax, if any, under Iowa Code section 298.2, until the moneys received or the levy and income surtax, if any, are reduced to zero.

d. The public educational and recreational levy under Iowa Code section 300.2, until the moneys received or the levy is reduced to zero.

e. The schoolhouse tax levy under Iowa Code section 278.1, subsection 7 (Code 1989), until the moneys received or the levy is reduced to zero.

f. Any money remaining after the reduction of the above levies may be used for any authorized infrastructure purpose of a school district.

701—109.3(422E) Application of law. All provisions found in 701—Chapter 108, which governs the collection of regular local option school infrastructure sales and services tax, are applicable to this chapter unless specific changes are set forth in this chapter. Consequently, the collection of tax by retailers and the transactions exempt from this tax are the same as in 701—Chapter 108.

701—109.4(422E) Collection of tax and distribution. When the director receives school infrastructure local option sales and services taxes from retailers, the director shall credit tax receipts, interest, and penalty to the school district's corresponding account within the secure an advanced vision for education (SAVE) fund as provided in Iowa Code Supplement section 422E.3A. Credits shall be made to accounts within SAVE that are maintained in the name of the school districts within the county. If the director cannot determine from which county receipts were collected, then the receipts must be allocated among the possible counties based on the department's allocation rules set forth below.

109.4(1) *Pro-rata share based on enrollment.* By June 1 preceding each fiscal year the director must compute the guaranteed school infrastructure amount for each school district, each school district's sales tax capacity per student, and the supplemental school infrastructure amount for the coming fiscal year. Each school district that has approved imposition of the tax under this chapter shall receive a guaranteed distribution amount of the tax revenues. Revenues from this tax will be allocated to each school district's respective account by the department. If a county has more than one school district or a portion of a school district, tax revenues must be remitted to each school district or portion of a school district in which the tax is imposed on a pro-rata basis. The allocation on the pro-rata basis will be based upon the ratio of the actual enrollment for the school district that attends school in the county to the total combined actual enrollments for all of the school districts that attend school in the county. The formula to compute this ratio is the following:

$$\frac{\text{Actual enrollment for the school district}}{\text{Total combined actual enrollments of all school districts in county}}$$

Combined actual enrollment for a county is based on actual enrollment figures reported by October 1 by the department of education to the department of management. The actual enrollment figures are forwarded by March 1 annually to the department of revenue so the department can compute estimate payments for the following fiscal year.

School districts that voted on and approved a school infrastructure local option sales and services tax prior to April 1, 2003, but seek to not have distribution under this new computation formula shall not be included in the computations of estimates for the county or counties in which the school district is located.

If a school district is located in more than one county, the amount to be distributed to that school district will be computed separately for each county based on the school district's actual enrollment in each county.

109.4(2) *Jurisdictions with tax approved prior to April 1, 2003.* Jurisdictions that approved implementation of this tax prior to April 1, 2003, shall receive revenues based on the following formulas:

a. Prior to April 1, 2003, approval and above per student capacity. A school district that approved the school infrastructure local option sales and services tax prior to April 1, 2003, and has a sales tax capacity per student above the guaranteed school infrastructure amount set forth in 109.1(422E) will receive an amount equal to its pro-rata share as computed in 109.4(1). A school district may elect to change the amount it receives and receive its distribution based on 109.4(1) for all subsequent years for the duration of the term of the tax for that jurisdiction. To receive this distribution, a school district must have passed a resolution by October 1, 2003, to agree to receive distribution of the revenues from the tax based on the full amount to be received under 701—Chapter 108.

b. Prior to April 1, 2003, approval and below per student capacity. A school district that approved the school infrastructure local option sales and services tax prior to April 1, 2003, and has a sales tax capacity per student below the guaranteed school infrastructure amount will receive an amount equal to its pro-rata share as computed in 109.4(1) and receive a supplemental amount as defined in 109.1(422E) for the remainder of the term of the tax in that jurisdiction. A school district may opt out of receiving this supplemental amount and choose to receive its distribution based on 109.4(1) for all subsequent years for the duration of the term of the tax for that jurisdiction. To opt out, a school district must have passed a resolution by October 1, 2003, to agree to receive distribution of the revenues from the tax based on the full amount to be received under 701—Chapter 108.

109.4(3) *Jurisdictions with tax voted on and approved on or after April 1, 2003.* Jurisdictions that have approved implementation of this tax on or after April 1, 2003, will receive revenues based on the following formulas:

a. A school district that has voted on and approved this tax on or after April 1, 2003, will receive an amount equal to its pro-rata share as computed in 109.4(1), not to exceed its guaranteed amount revenues. If a school district's pro-rata share does not meet the guaranteed amount of revenues then the district must receive a supplemental amount.

b. A school district that approves the continuation of the tax on or after April 1, 2003, will receive an amount equal to its pro-rata share as computed in 109.4(1), not to exceed its guaranteed amount. However, if the school district's pro-rata share is less than its guaranteed amount, the school district will receive a supplemental amount.

It must be noted that payment to a school district shall not exceed the guaranteed school district amount. A school district that qualifies for a supplemental payment shall not receive more than the guaranteed amount in any subsequent year.

701—109.5(422E) Insufficient funds. There may arise a deficiency in the SAVE fund to pay the supplemental payments in full. In this situation, the amount available in the SAVE fund must first be used to increase the amount to the school district with the lowest sales tax capacity per student to an amount equal to the amount for the school district or school districts with the next lowest sales tax capacity per student, and then increase the amount to school districts to an amount equal to the amount for the school district or school districts with the next lowest sales tax capacity per student and continue on in this manner until money is no longer available or all school districts reach their guaranteed school infrastructure amount.

701—109.6(422E) Use of revenues by the school district. Nothing in these rules prevents a school district from using its sales tax capacity per student or its guaranteed amount to pay principal and interest on obligations issued pursuant to Iowa Code Supplement section 422E.4.

109.6(1) *Districts with below guaranteed amount.* School districts with a sales tax capacity per student below its guaranteed amount must use the amount equal to its supplemental amount to pay

principal and interest on outstanding bonds previously issued for school infrastructure needs as set forth in Iowa Code Supplement section 422E.1(3). Any money remaining after the payment of these obligations may be used for authorized infrastructure purposes of the school district. After July 1, 2003, an election may be held for voters in the school district to approve a revenue purpose statement which includes items for which the additional revenues may be expended after payment of the district's bond obligations.

109.6(2) *Spending limitation on small enrollment—certificate of need.* A school district shall not expend the supplemental amount received for new construction or for payments for bonds issued for new construction. In order to expend supplemental money for new construction or bonds for new construction, the school district must, prior to expenditure, apply to the department of education for a certificate of need.

To determine whether a certificate of need should be issued or denied, see Iowa Code Supplement section 422E.3A(6) or the rules of the department of education for factors that will be considered.

A certificate of need for the above-defined school districts is not required in order to pay the following:

a. Outstanding bonds issued for new construction pursuant to Iowa Code section 296.1, prior to April 1, 2003.

b. To repair schoolhouses or buildings, equipment, technology, or transportation equipment for transporting students as set forth in Iowa Code Supplement section 298.3; or

c. Construction necessary to comply with the Americans with Disabilities Act pursuant to 42 U.S.C. Sections 12101-12117.

701—109.7(422E) Bonds. Negotiable, interest-bearing school bonds may be issued by the school district's board of directors without an election. Revenues from tax imposed under this chapter must be used to repay principal and interest of these bonds. Proceeds from these bonds must be used only for school infrastructure needs as defined in this chapter. These bonds may only be issued by a school district that has imposed tax under this chapter. The maximum period for principal on bonds to be payable cannot exceed the date of repeal stated in the ballot proposition.

701—109.8(422E) 28E agreements. A school district which has imposed the tax under this chapter has the authority to enter into an agreement authorized and defined in Iowa Code chapter 28E with one or more cities whose boundaries encompass all or a part of the area of the school district. Such an agreement will set forth a designated amount of revenues that a city or each city may receive from the tax imposed under this chapter. A city or cities entering into an Iowa Code chapter 28E agreement are authorized to expend their designated portion of taxes imposed under this chapter for any valid purpose permitted and defined under this chapter as a school infrastructure purpose or for any purpose authorized by the governing body of the city.

A school district where school infrastructure local option sales and services tax is imposed is also authorized to enter into an Iowa Code chapter 28E agreement with another school district which is located partially or entirely in or is contiguous to the county where the tax is imposed. The school district shall expend its designated portion of the school infrastructure local option sales and services tax revenues only for infrastructure purposes.

A county entering into an Iowa Code chapter 28E agreement with a school district in which tax under this chapter has been imposed is authorized to expend its designated portion of such tax revenues to provide property tax relief within the boundaries of the school district located in the county.

Effective July 1, 2003, a school district that has imposed tax under this chapter may enter into an Iowa Code chapter 28E agreement with a community college or area education agency that is located partially or entirely in or is contiguous to the county where the tax is imposed. The community college must expend its designated portion of the tax under this chapter only for infrastructure purposes. The area

education agency must expend its designated portion of the tax under this chapter only for infrastructure and maintenance purposes.

These rules are intended to implement Iowa Code Supplement sections 422E.1 to 422E.3, 422E.3A, 422E.4 and 422E.6.

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CHAPTERS 110 to 119
Reserved

TITLE XVI
REASSESSMENT EXPENSE FUND

CHAPTER 120
ORGANIZATION AND OPERATION

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

701—120.1(421) Organization of committee. The reassessment expense fund committee consists of the director of revenue, director, office of management, and the chairperson of the state board of tax review. One of the three members is selected as the chairperson and it is the duty of the chairperson to call and chair meetings. The reassessment expense fund committee shall appoint a secretary who shall take minutes of committee meetings and maintain the committee's records. The committee is established to authorize loans from the reassessment expense fund for assessing jurisdictions used in reappraising a class or classes of property within the jurisdiction. A majority of the members must be present to constitute a quorum and a majority vote by those members present shall govern and control. The office of the committee is maintained in the office of the Department of Revenue in the Hoover State Office Building, Des Moines, Iowa 50319. Persons wishing to obtain information pertaining to the committee or to make submissions or requests should direct correspondence to that address.

This rule is intended to implement Iowa Code section 421.30.

701—120.2(421) Application for loan. Applications for loan from the reassessment expense fund may be made by a conference board established under Iowa Code section 441.2. The application shall be made on forms provided by the director of revenue and shall be submitted to the director who will forward the application to the reassessment expense fund committee. Applications shall contain the following information:

1. A statement of the amount of funds in the special appraisal fund, any unencumbered balance in the assessment expense fund, and the maximum amount of revenue which could be raised from the assessment expense fund and the special appraisal fund.
2. A detailed statement as to how moneys obtained from the reassessment expense fund will be expended, such statement to be itemized to indicate specific expenditures for personnel, supplies and materials, mileage, public information, and payment for any work performed under contract with a professional appraisal firm.
3. A copy of the assessing jurisdiction's most recent budget as approved by the office of management.
4. A copy of any proposed contract with a professional appraisal company.

This rule is intended to implement Iowa Code section 421.30.

701—120.3(421) Criteria for granting loan. In determining whether to grant a loan from the reassessment expense fund and the amount of any such loan, the reassessment expense fund committee shall consider the following factors:

1. The amount of moneys presently on hand and not encumbered or intended for another purpose in both the assessment expense fund and the special appraisal fund.
2. When the assessing jurisdiction can next begin to collect revenues from the tax levied for the special appraisal fund.
3. The reasonableness and accuracy of the jurisdiction's statement as to how the funds are to be expended, giving special attention as to whether such funds will be expended in such a manner as to ensure compliance with the reassessment order.
4. The capability of the jurisdiction to repay the loan within the time period specified in Iowa Code section 421.30.

In the event the reassessment expense fund committee denies a request for a loan or approves a loan in an amount less than that requested by the assessing jurisdiction, the assessing jurisdiction may, within ten days of receipt of notice of the committee's decision, request the committee to reconsider the original

request. Such reconsideration by the committee shall be considered final action on the matter and the committee's final decision may be appealed to the district court.

This rule is intended to implement Iowa Code section 421.30.

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CHAPTER 121
Reserved

TITLE XVII
ASSESSOR CONTINUING EDUCATION

CHAPTER 122
ADMINISTRATION

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

701—122.1(441) Establishment. Iowa Code section 441.8 established a program of continuing education to be developed and administered by the director of revenue, hereinafter referred to as the director. To administer the program, the director has established an assessor education advisory committee, hereinafter referred to as the committee.

This rule is intended to implement Iowa Code section 441.8.

701—122.2(441) General operation. The chairperson of the committee shall be the director. The director shall appoint to the committee a representative of the property tax division of the department of revenue and two assessor representatives. The assessor representatives shall serve four-year staggered terms. To initiate the staggered-term policy, one assessor shall serve through December 31, 2009, and the other assessor shall serve through December 31, 2011. The committee will meet at least once each year.

This rule is intended to implement Iowa Code section 441.8.

701—122.3(441) Location. Persons may obtain information about the committee and its activities at the Department of Revenue in the Hoover State Office Building, Des Moines, Iowa 50319. Persons wishing to obtain information or make submissions should address their correspondence to that address.

This rule is intended to implement Iowa Code section 441.8.

701—122.4(441) Purpose. The committee is established to assist the director in developing and administering a program of continuing education for Iowa assessors and deputy assessors. The program will emphasize assessment and appraisal procedures, assessment laws, rights and responsibilities of taxpayers and property owners related to the assessment of property for taxation, duties of assessors and deputy assessors, and other matters related to the positions of assessor and deputy assessor. The director, with the assistance of the committee, will designate the courses to be offered in the program, the content of the courses, and the number of hours of classroom instruction for each course. An evaluation of the program will be conducted at least annually with any necessary changes made.

The director shall certify those assessors and deputy assessors who have received sufficient credit to be eligible for reappointment to their present position.

This rule is intended to implement Iowa Code section 441.8.

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CHAPTER 123
CERTIFICATION
[Prior to 12/17/86, Revenue Department[730]]

701—123.1(441) General. Courses in the continuing education program may be taken for tested credit or nontested credit. To receive tested credit for a course, an assessor or deputy assessor must attend each session of the course and attain a grade of at least 70 percent on an examination given at the conclusion of the course. To receive nontested credit for a course, an assessor or deputy assessor must attend each session of the course. Credit will be given for each course equal to the number of hours of classroom instruction contained in the course. A course may be taken for credit only once during the assessor's or deputy assessor's current term of office. A person cannot receive both tested credit and nontested credit for the same course, except for those courses specifically designated by the director of revenue. At the discretion of the director, up to 30 hours of tested credit may be granted for the completion of a narrative appraisal meeting the satisfactory criteria established by a professional appraisal society designated by the director. Only one narrative appraisal may be approved for credit during an assessor's or deputy assessor's current term of office. A term of office for purposes of these rules is six years.

701—123.2(441) Confidentiality. Examinations shall be confidential to the members of the committee and persons designated by the director to have access to the examinations. Persons given access to the examinations are those persons administering the examination, the instructors of the course for which the exam is given and those persons entrusted with the storage and retention of examinations by the director. The department of revenue will store records of attendance at the courses and scores of the examinations. Any person having access to examinations shall not divulge in any manner not provided by law the results of any examination.

701—123.3(441) Certification of assessors. An assessor who has received credit equal to at least 150 hours of classroom instruction, of which at least 90 hours are tested credit, during the assessor's current term shall be certified to the assessor's conference board as eligible for reappointment to that position. Upon written request by an assessor seeking a waiver of the continuing education requirements, the director may waive the requirements for good cause. Certification shall be only that the incumbent has met the requirements to be eligible for reappointment. No scores or other information will be given to the conference board.

A person who was appointed to complete an unexpired term shall be certified as eligible for reappointment if the person completes the required credits determined as follows:

$$\frac{\text{Number of months of unexpired term filled}}{72} \times 150$$

For example, if a person were appointed to fill the last 24 months of an unexpired term, the credit necessary for certification would be 50 hours determined as follows:

$$\frac{24}{72} \times 150 = 50 \text{ hours}$$

If the person appointed to complete an unexpired term is an assessor, the assessor may carry forward any credit hours received in the previous position in excess of the number that would be necessary to be considered current in that position. For example, if the assessor had completed four years of a six-year term and had completed 120 hours of continuing education credit, the assessor could carry forward to the new assessment jurisdiction 20 hours of credit (120 - 4/6 × 150).

In situations in which the required number of hours of credit must be prorated, at least 60 percent of the credits earned must be tested credit. For example, if the person in the example immediately above

must earn 31 hours of credit for certification during the 15-month period, at least 19 of the hours must be tested credit (31 × .60 = 18.6 = 19). Partial credit hours shall be rounded to the nearest whole number.

701—123.4(441) Certification of deputy assessors. A deputy assessor who has received credit equal to at least 90 classroom hours of instruction, of which at least 60 hours are tested, during each six-year period following the deputy's appointment as deputy assessor, shall be certified to the assessor employing the deputy as eligible to continue as deputy assessor in that position. Certification shall be only that the deputy has or has not met the requirements to be eligible to remain in that position. No scores or other information will be given to the assessor. For situations in which the required number of credit hours must be prorated, see rule 123.3(441).

If a deputy assessor fails to comply with continuing education requirements, the deputy shall be removed from that position and not reinstated until successful completion of the required hours of credit. Upon written request by a deputy seeking a waiver of the continuing education requirements, the director may waive the requirements for good cause. The number of credit hours required for the deputy to be eligible for appointment as a deputy in another jurisdiction shall be prorated according to the completed portion of the deputy's six-year term.

701—123.5(441) Type of credit. A course, seminar, workshop, or symposium for which an examination is given may be taken for tested credit or nontested credit at the discretion of the assessor or deputy assessor. However, a course may not be taken twice—once for tested credit and again for nontested credit—unless specific approval is granted by the director. At the discretion of the director, up to 30 hours tested credit may be given for a narrative appraisal approved by a professional organization. In order to receive credit for a narrative appraisal, an assessor or deputy assessor is required to provide a letter from the professional organization stating the date the appraisal was approved.

701—123.6(441) Retaking examination. If an assessor or deputy assessor successfully retakes an examination for a course for which nontested credit previously had been granted, the credit will be changed to tested credit upon receipt by the director of evidence of passing the examination.

701—123.7(441) Instructor credit. An assessor or deputy assessor who serves as an instructor for a course approved by the director for continuing education may receive nontested credit for the number of hours of classroom instruction. The credit shall be granted only once for each course, and cannot be granted for a course for which the instructor previously received credit as a student.

701—123.8(441) Conference board and assessor notification. Upon receiving credit for the required number of hours of tested and nontested credit, an assessor or deputy assessor should request that the director notify the appropriate conference board or assessor that the continuing education requirements have been satisfied to ensure timely notification.

Rules 123.1(441) to 123.8(441) are intended to implement Iowa Code Supplement section 441.8 and Iowa Code section 441.11.

701—123.9(441) Director of revenue notification. The chairperson of the conference board shall give written notice to the director of revenue of the appointment or reappointment of an assessor and the effective date within ten days of the decision of the board, and the assessor shall give written notice to the director of the appointment of a deputy assessor and the effective date within ten days of the decision of the assessor.

This rule is intended to implement Iowa code sections 441.6 and 441.10.

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CHAPTER 124
COURSES
[Prior to 2/17/86, Revenue Department[730]]

701—124.1(441) Course selection. The courses selected by the committee for the continuing education program shall emphasize the areas outlined in rule 701—122.4(441). In establishing courses, the committee will consider current assessor training programs in Iowa and other states, and information from other sources.

701—124.2(441) Scheduling of courses. Courses will be scheduled in such a way as to offer a variety of times to allow flexibility for assessors and deputy assessors to schedule their continuing education program. The number of participants for any course may be limited at the time the course is established to ensure proper training can be given each participant.

701—124.3(441) Petitioning to add, delete or modify courses. The director accepts and encourages the public to provide input into the development of the assessor education program. Any person or group may petition to add, delete or modify all or part of the program by submitting a written request for the committee's consideration.

The overriding consideration in determining whether a specific course is acceptable as continuing education is that it be a formal program of learning which contributes directly to the professional competence of an assessor or deputy assessor.

A continuing education course will qualify only if:

1. An outline of the course content and a description or copy of the final examination are prepared and filed with the director. In addition, any course changes are required to be filed with the director.
2. The course is at least one hour (50-minute period) in length.
3. The course is conducted by a qualified instructor, discussion leader, or lecturer. A qualified instructor, discussion leader, or lecturer is any individual whose background, training, education or experience makes it appropriate for that person to lead a discussion on the subject matter of the particular course.
4. Certificates of attendance must be sent to the director and the student.
5. An organization or person desiring accreditation of a course shall apply to the director for accreditation at least 60 days in advance of the commencement of the course on an application provided by the director (Form 51-002 "Application for Course Certification"). The director shall approve or deny the application. The application shall state the dates; subjects offered; total hours of instruction; names and qualifications of the instructor, discussion leader or lecturer; a statement of the objectives of the course and how the objectives will be attained; an outline of the course content; a copy of the final examination; and any other pertinent information.

701—124.4(441) Course participation. It is the responsibility of individual assessors or deputy assessors to comply with the enrollment provisions of respective courses designated and established by the committee.

701—124.5(441) Retaking a course. If an assessor or deputy assessor fails a course by receiving a grade of less than 70 percent on the final examination or does not meet attendance requirements established by the director, the course may be retaken. Once a person has passed a course and received credit for the course, no further credit can be received by taking the course again, except for those courses so designated by the director. However, if an assessor or deputy assessor wishes to retake a course as a refresher for the materials contained in the course, the assessor or deputy assessor may do so, though no final examination need be taken. If a course is applied for by a person already having received credit, that person will only be allowed in the course if space is available after consideration is first given to persons seeking credit for certification in the course.

701—124.6(441) Continuing education program for assessors. The director, with the assistance of the committee, has determined the initial course content of the continuing education program for Iowa assessors. Courses, seminars, workshops, and schools administered by the American Institute of Real Estate Appraisers (AIREA), the International Association of Assessing Officers (IAAO), the Iowa Department of Revenue (IDR), the Society of Real Estate Appraisers (SREA), the American Society of Farm Managers and Rural Appraisers (ASFMRA), the Iowa State Association of Assessors (ISAA), the National Association of Independent Fee Appraisers (NAIFA), graduate centers, universities, community colleges and technical institutes, as qualify under rule 701—122.4(441), have been approved for certification. A copy of the approved courses may be obtained from the Director of the Department of Revenue, Hoover State Office Building, Des Moines, Iowa 50319. The director, with the assistance of the committee, shall recertify courses at least every six years. At the request of the director, the organization conducting a course shall provide the director with copies of course evaluation forms completed by students.

Upon registration for an approved course, it is the responsibility of the assessor or deputy assessor to request that notification of attendance and test score be forwarded by the appropriate organization(s) to the director justifying certification.

After the taking of a course it is the responsibility of the assessor or deputy assessor to request credit for the course by completing an application provided by the director (Form 51-001 "Application for Course Credit") and submitting it to the Director of the Iowa Department of Revenue, Hoover State Office Building, Des Moines, Iowa 50319.

The department of revenue will serve as the principal storage facility for records of attendance and scores of examination. The information shall be confidential in nature. Certification to the conference boards by the director shall be only that the incumbent has met the requirements of the continuing education program and is eligible for reappointment.

These rules are intended to implement Iowa Code section 441.8.

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CHAPTER 125
REVIEW OF AGENCY ACTION
[Prior to 12/17/86, Revenue Department[730]]

701—125.1(441) Decisions final. Decisions of the director shall be considered final agency action for purposes of appeal. Any person aggrieved by an action of the director may appeal to the district court as provided by law. Results of examinations are not decisions of the director and are not appealable directly to court. If a person feels aggrieved on the results of an examination or course, the person may petition the director in accordance with rule 701—124.3(441).

701—125.2(441) Grievance and appeal procedures. Prior to appealing to district court any aggrieved person may petition the director in writing to reconsider an action. In addition, the director will consider grievances which have been filed based on any area in which the director has jurisdiction.

A petition or grievance must be filed with the director within 30 days of the decision or action leading to the grievance. The petition must state the reasons for reconsideration of the director's action and a grievance must contain the facts leading to the grievance and a statement showing the director has jurisdiction.

The director shall appoint a grievance committee comprised of three members of the assessor education advisory committee to review petitions and grievances, meet with the affected parties if necessary, and recommend in writing to the director a proposed resolution of the matter. The director will consider the recommendation of the grievance committee at its next meeting and inform the affected parties of the decision in writing within ten days. The date of the written reply by the director shall constitute final agency action for purposes of appeal.

These rules are intended to implement Iowa Code section 441.8.

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CHAPTERS 126 to 149
Reserved

TITLE XVIII
DEBT COLLECTION

CHAPTER 150
FEDERAL OFFSET FOR IOWA INCOME TAX OBLIGATIONS

701—150.1(421,26USC6402) Purpose and general application of offset of a federal tax overpayment to collect an Iowa income tax obligation. Effective for refunds of overpayments to the Internal Revenue Service (IRS) that are payable beginning January 1, 2000, the IRS may offset, in whole or in part, an amount of federal refund payable to an Iowa resident by the amount of any past due legally enforceable Iowa income tax obligation owed by such taxpayer. The purpose of this chapter is to establish a procedure to identify taxpayers that owe Iowa income tax liabilities and to establish a procedure for requesting the offset of the taxpayer's federal tax overpayment to collect a past due legally enforceable Iowa income tax obligation.

701—150.2(421,26USC6402) Definitions. The following definitions are applicable to the federal offset program:

"Assessment" means the determination of a past due tax obligation and includes self-assessments. An assessment includes the Iowa income tax, interest, penalties, fees or other charges associated with the past due legally enforceable Iowa income tax obligation.

"Department," "state of Iowa," "Iowa" or *"the state"* means the Iowa department of revenue.

"Director" means the director of the Iowa department of revenue.

"Overpayment" means a federal tax refund due and owing to a person or persons.

"Past due legally enforceable Iowa income tax obligation" means a debt which resulted from a judgment rendered by a court of competent jurisdiction which has determined an amount of state income tax to be due or a determination after an administrative hearing which has determined an amount of state income tax to be due and which is no longer subject to judicial review. In addition, this term also includes a debt which resulted from a state income tax which has been assessed but not collected, for which the time for redetermination has expired, and which has not been delinquent for more than ten years.

"Resident of Iowa" means any person with a federal overpayment for the year in which Iowa seeks offset and such person has an Iowa address listed on that person's federal return for the tax period of overpayment.

"Secretary" means the Secretary of the Treasury for the federal government.

"State income tax obligation" or *"Iowa income tax obligation"* is intended to cover all Iowa income taxes. This term includes all local income taxes administered by the Iowa department of revenue or determined to be a "state income tax" under Iowa law. Such taxes may include, but are not limited to, individual income tax, income surtax, fiduciary income tax, withholding tax, or corporate income tax, and penalties, interest, fines, judgments, or court costs relating to such tax obligations.

"Tax refund offset" means withholding or reducing, in whole or in part, a federal tax refund payment by an amount necessary to satisfy a past due legally enforceable state income tax obligation owed by the payee (taxpayer) of the tax refund payment. This rule only involves the offset of tax refund payments under 26 U.S.C. 6402(e); it does not cover the offset of federal payments other than tax refund payments for the collection of past due legally enforceable state income tax obligations.

"Tax refund payment" means the amount to be refunded to a taxpayer by the federal government after the Internal Revenue Service (IRS) has applied the taxpayer's overpayment to the taxpayer's past due tax liabilities in accordance with 26 U.S.C. 6402(a) and 26 CFR 301.6402-3(a)(6)(i).

701—150.3(421,26USC6402) Prerequisites for requesting a federal offset. The following are the requirements that the state of Iowa must meet before the state can request an offset of a federal overpayment against an Iowa income tax obligation:

150.3(1) *Pre-offset notice.* At least 60 days prior to requesting the offset of a taxpayer's federal overpayment for an Iowa income tax obligation, the state of Iowa must provide notice by certified mail,

return receipt requested, to the person owing the Iowa income tax liability. This notice must state the following information:

a. That the state proposes to request the offset of the person's federal overpayment against a specified Iowa income tax obligation and that such an obligation is past due and legally enforceable;

b. That the authority for this offset is Internal Revenue Service Restructuring and Reforms Act of 1998, Pub. L. 105-206, 112 Stat. 685, 779 (1998), as implemented by this chapter;

c. That the person owing the obligation has 60 days from the date of the notice to present evidence to the department that all or part of the obligation at issue is not past due or not legally enforceable;

d. The mailing address for submitting such evidence;

e. That failure to timely submit the evidence waives the taxpayer's right to protest the amount, validity or qualification of the Iowa income tax obligation for offset at any time in the future; and

f. Where contact can be made with the department for additional information or questions.

150.3(2) The state must consider any evidence presented by the person owing the obligation and determine whether the amount or amounts are past due and legally enforceable.

150.3(3) The state must have made written demand on the taxpayer to obtain payment of the state income tax obligation for which the request for offset is being submitted.

150.3(4) Additional pre-offset notices. The department must provide a taxpayer with an additional pre-offset notice if the amount of the obligation to be subject to offset is increased due to a new assessment. However, a new pre-offset notice is not required to be sent to the taxpayer by the department if there is an increase in the amount to be offset due to accrued interest, penalties or other charges associated with an Iowa income tax obligation in which notice has previously been given.

150.3(5) Before offset of the federal refund can be requested by the state of Iowa, the person's Iowa income tax liability must be at least $25, unless otherwise provided based on the discretion of the department and the Secretary. If an individual owes more than one Iowa income tax obligation, the minimum amount will be applied to the aggregate amounts of such obligations owed to Iowa.

150.3(6) Offset applies to residents of Iowa as defined under these rules.

701—150.4(421,26USC6402) Procedure after submission of evidence. Upon timely receipt of evidence by the department from the taxpayer as set forth in 150.3(1)*"c,"* the department has 60 days to review the evidence and notify the taxpayer whether the evidence submitted is sufficient to terminate the intended offset. If the department determines that the evidence is sufficient, the procedure to initiate the federal offset shall be terminated for that obligation and the taxpayer's record of Iowa income tax obligation for that particular obligation shall be adjusted accordingly. However, if the department determines that the evidence is insufficient to show that the amount or amounts at issue are not, in whole or in part, a past due and legally enforceable income tax obligation, the department must notify the taxpayer within 60 days of receiving the evidence from the taxpayer.

The contest of an offset under these rules is subject to judicial review under Iowa Code section 17A.19 as "other agency action."

In cases in which a taxpayer claims immunity from state taxation due to being an enrolled member of an Indian tribe who lives on that member's reservation and derives all of that member's income from that reservation, Iowa must consider such claims de novo on the merits, unless such claims have been previously adjudicated by a court of competent jurisdiction.

701—150.5(421,26USC6402) Notice by Iowa to the Secretary to request federal offset. Iowa must notify the Secretary of an Iowa income tax obligation in the manner prescribed by the Secretary.

701—150.6(421,26USC6402) Erroneous payments to Iowa. If Iowa receives a notice from the Secretary that an erroneous payment has been made to Iowa under these rules, Iowa must promptly pay to the Secretary, in accordance with such rules and regulations as the Secretary may prescribe, an amount equal to the amount of the erroneous payment (without regard to whether any other amounts payable to Iowa under these rules have been paid to Iowa). In the alternative, Iowa may return the erroneous payment directly to the taxpayer. If this latter alternative is used by Iowa, then Iowa must

notify the Secretary of the erroneous offset being paid to the taxpayer, and the taxpayer's records will be adjusted accordingly.

701—150.7(421,26USC6402) Correcting and updating notice to the Secretary. Iowa must notify the Secretary of any deletion or decrease in the amount of past due legally enforceable Iowa income tax obligation referred to the Secretary for collection by offset under these rules. Iowa may also notify the Secretary of any increases in the amount or amounts referred to the Secretary for collection by offset under these rules provided that Iowa has complied with the requirements of these rules with regard to such amount or amounts.

These rules are intended to implement Iowa Code chapter 421 and 26 U.S.C. 6402(e) et seq.

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CHAPTER 151
COLLECTION OF DEBTS OWED THE STATE OF IOWA OR A STATE AGENCY

701—151.1(421) Definitions. For purposes of this chapter, the following definitions shall govern:

"Debtor" means any person having a delinquent account, charge, fee, loan, or other indebtedness due the state of Iowa or any state agency.

"Department" means the Iowa department of revenue or the director of the Iowa department of revenue and the director's representative.

"Director" is the director of revenue.

"Liability" or *"debt"* means any liquidated sum due and owing to the state of Iowa or any state agency which has accrued through contract, subrogation, tort, operation of law, or any legal theory regardless of whether there is an outstanding judgment for that sum.

"Person" or *"entity"* means individual, corporation, business trust, estate, trust, partnership or association, limited liability company, or any other legal entity, but does not include a state agency.

"State agency" or *"agency"* means a board, commission, department, including the department of revenue, or other administrative office or unit of the state of Iowa. "State agency" does not include the general assembly, the governor, or any political subdivision of the state, or its offices and units.

701—151.2(421) Scope and purpose. The purpose of these rules is to improve collection efforts by establishing a centralized collection system in the department for use by state agencies to collect delinquent accounts.

701—151.3(421) Participation guidelines. Those state agencies qualified to use this chapter's collection provisions should utilize those provisions when it is cost-effective to do so. Final determination regarding whether or not it will be cost-effective to collect any debt owed will be at the discretion of the director. Generally, it will not be cost-effective to pursue collection of a debt if the total anticipated collection cost will exceed the amount of the claim that could reasonably be expected to be realized. The cost-effectiveness criteria which the director applies will not be the same for every agency. Circumstances differ among agencies.

701—151.4(421) Duties of the agency. The agency seeking the use of the centralized collection system shall have the following duties regarding the department and debtors.

151.4(1) *Notification to the department.* The agencies must provide a list of debtors to the department of revenue. This list must be in a format and type prescribed by the department and include information relevant to the identification of the debtor and the source and amount of the debt. The agencies shall terminate all collection activities once notification is given to the department.

151.4(2) *Change in status of debt.* A state agency which has provided liability information to the department of revenue must notify the department immediately of any change in the status of a debt. This notification shall be made no later than ten calendar days from the occurrence of the change. Change in status may come from payment of the debt or liability, invalidation of the liability, alternate payment arrangements with the debtor, bankruptcy, or other factors.

701—151.5(421) Duties of the department—performance of collection. The department will develop procedures for administering the collection program on an agency basis. Procedures may vary in order to achieve the greatest efficiency in administering the collection program for each agency.

701—151.6(421) Payment of collected amounts. Payments of collected amounts shall be made by the department monthly, but other arrangements can be made if agency requirements specify a different time period. Payments will be made to the agency, to the general fund, split between the two, or as required by the agency depending on the circumstances of each agency.

701—151.7(421) Reimbursement for collection of liabilities. Costs incurred by the department in administering the collection program will be charged to the state agency requesting collection. The costs will be charged to the agency or deducted from the gross proceeds collected whichever the director determines is reasonable based on the requesting agency's circumstances. Costs may include direct expenses such as salaries, travel, telephone, supplies, equipment, and system modification and development costs; or indirect costs such as space, security, or utility costs. If the above-described procedure is prohibited by paramount state or federal law, the director shall allow charges, deductions, or reimbursement in a manner which conforms to the paramount law.

701—151.8(421) Confidentiality of information. Information shared between state agencies shall be deemed confidential and shall be disclosed only to the extent that sufficient information is given that is relevant to the identification of persons liable to state agencies. The confidentiality provisions of Iowa Code sections 422.20 and 422.72 do not apply to tax information contained in the centralized computer data bank. The information is to be used for purpose of debt collection or license application or renewal.

These rules are intended to implement Iowa Code sections 421.17, 422.20, and 422.72.

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CHAPTER 152
DEBT COLLECTION AND SELLING OF PROPERTY TO COLLECT DELINQUENT DEBTS

701—152.1(421,422,626,642) Definitions.

"Delinquent debtor" means an individual, corporation, limited liability company, business trust, estate, trust, partnership, or any other legal entity that owes a delinquent liability, or unpaid taxes to the state or a liability which is collectible by the state.

"Department" means the Iowa department of revenue.

"Director" means the director of revenue.

"Property" means real property, tangible and intangible property, and includes a homestead.

"State" means the state of Iowa.

This rule is intended to implement Iowa Code sections 421.17 and 422.26 and Iowa Code chapters 626 and 642.

701—152.2(421,422,626,642) Sale of property. Property may be seized and sold to satisfy unpaid taxes, delinquent liabilities owed to the state, and liabilities collected by the state upon the approval of the person appointed by the director to collect unpaid taxes, delinquent liabilities owed to the state, and liabilities collected by the state. If the property to be sold is real estate or a homestead, it will only be sold with the written authorization of the director. A homestead may be sold to satisfy delinquent taxes collected under Iowa Code section 422.26 and any other similar section. (See O. P. Att'y. Gen. Hardy to Bair, Director of Revenue, 8-23-94) However, a homestead may not be sold for collection of any other liability owed to or collected by the state other than taxes unless specifically authorized by statute.

This rule is intended to implement Iowa Code sections 421.17 and 422.26 and Iowa Code chapters 626 and 642.

701—152.3(421,422,626,642) Means of sale. The department shall, when the sale of property has been approved by a person authorized by the director or when the director has authorized in writing the sale of real property or a homestead to satisfy unpaid taxes, delinquent liabilities owed to the state and liabilities collected by the state, issue a distress warrant or obtain a writ of execution directed to the county sheriff in the county where the property is located, or by other means authorized by statute to satisfy delinquent liabilities owed to the state and liabilities collected by the state, and proceed as authorized by relevant provisions of the Iowa Code, including chapters 422, 626, and 642.

This rule is intended to implement Iowa Code sections 421.17 and 422.26 and Iowa Code chapters 626 and 642.

[Filed 10/31/96, Notice 9/25/96—published 11/20/96, effective 12/25/96]

CHAPTER 153
Reserved

CHAPTER 154
CHALLENGES TO ADMINISTRATIVE LEVIES AND PUBLICATION OF NAMES OF DEBTORS

701—154.1(421) Definitions. For purposes of this chapter, the following definitions shall govern:

"Department" means the Iowa department of revenue.

"Director" means the director of the Iowa department of revenue.

"Facility" means the centralized debt collection facility of the department of revenue.

"Financial institution" includes a bank as defined in Iowa Code section 524.103, credit union as defined in Iowa Code section 533.51, or savings and loan as defined in Iowa Code section 534.102. "Financial institution" also includes an institution which holds deposits for an agent, broker-dealer, or an issuer as defined in Iowa Code section 502.102.

"Obligor" means a person who is indebted to the state of Iowa or a state agency for any delinquent accounts, charges, fees, loans, taxes, or other indebtedness due the state or indebtedness being collected by the state.

"Person" means individual, corporation, business trust, estate trust, partnership, limited liability company or association, or any other legal entity, but does not include a state agency.

701—154.2(421) Administrative levies. The centralized debt collection facility may administratively initiate an action to seize one or more accounts in a financial institution of a person who has a delinquent account, charges, fees, loans, taxes, or other indebtedness owed to the state or being collected by the state. The facility initiates an administrative levy by notifying a financial institution of the name and social security number of the obligor, a statement that the obligor is believed to have an account at the financial institution, and a statement that the obligor's account is subject to seizure and that the financial institution is authorized and required to forward moneys to the centralized collection facility. The notice must contain the maximum amount that shall be forwarded to the facility which cannot exceed the amount of the indebtedness.

The facility must notify an obligor of the administrative levy. The notice must contain the name and social security number of the obligor, a statement that the obligor is believed to have an account at the financial institution, a statement that the obligor's account is subject to seizure and the financial institution is authorized and required to forward moneys to the facility, the maximum amount to be forwarded to the facility, the time frames the financial institution must meet in forwarding any amounts, a statement that any challenge to the action must be in writing and must be received by the facility within ten days of the date of the notice to the obligor, and the address of the facility.

701—154.3(421) Challenges to administrative levies. A challenge to an administrative levy can only be made by an obligor or an account holder of interest. A challenge to an administrative levy will be reviewed by the centralized debt collection facility of the department. This review is not subject to the provisions of Iowa Code chapter 17A.

701—154.4(421) Form and time of challenge. The obligor or an account holder of interest must submit a written challenge to an administrative levy within ten days of the date of the notice. The written challenge shall be submitted to the individual identified as the contact for the facility.

701—154.5(421) Issues that may be raised. The issues raised by the challenging party, which are limited to a mistake of fact, may include but are not limited to:

1. The challenging party has the same name as the obligor but is not the correct person.
2. The challenging party does not have an interest in the account that is being seized.
3. The amount listed in the notice to the obligor is greater than the amount actually owed.
4. The written challenge must be mailed to: Centralized Collection Facility, P.O. Box 6128, Des Moines, Iowa 50309, with adequate postage.

701—154.6(421) Review of challenge. Review of a challenge to an administrative levy shall be conducted by the facility within ten days of receipt of the written challenge. If the challenging party is not available for the review on the scheduled date, the review shall take place without the challenging party being present. Information in favor of the challenging party shall be considered by the facility in the review. The facility may utilize additional information if available. Only a mistake of fact, including but not limited to, a mistake of identity of the obligor or a mistake in the amount owed to or being collected by the state shall be considered as a reason to dismiss or modify the action.

701—154.7(421) Actions where there is a mistake of fact. Actions to be taken if the facility determines that a mistake of fact has occurred:

1. If a mistake of identity has occurred or the obligor does not have a delinquent or accrued amount owed to or being collected by the state, the facility shall notify the financial institution that the administrative levy has been released. The facility shall provide the obligor with a copy of the notice by regular mail.

2. If the delinquent or accrued amount owed to or being collected by the state is less than the amount indicated in the notice of administrative levy, the facility shall provide a notice to the financial institution of the revised amount, with a copy of the original notice, and issue a notice to the obligor by regular mail. Upon written receipt of the notice from the facility, the financial institution shall release funds in excess of the revised amount and forward the revised amount to the facility pursuant to the administrative levy.

701—154.8(421) Action if there is not a mistake of fact. If the facility finds that no mistake of fact has occurred, the facility shall provide notice to that effect to the challenging party by regular mail and notify the financial institution to forward the moneys pursuant to the administrative levy.

701—154.9 to **154.15** Reserved.

701—154.16(421) List for publication. The director may compile and make available for publication a list of names, with last-known addresses and amounts of indebtedness owed to or being collected by the state if the indebtedness is subject to the centralized debt collection procedure established in Iowa Code subsection 421.17(34). The director shall determine when to compile the list, but shall not be required to do so.

701—154.17(421) Names to be published. Names selected for release for publication shall be based on the records of the facility. The director may not include the names of persons who owe less than $100 or the threshold amounts determined by the director. The threshold amounts may vary by the debt types being collected by the central collection facility. The director may withhold names from publication if in the director's opinion publication would not assist in the collection of the debt.

The director will not release for publication names of parties who have made arrangements with the facility to pay the outstanding debt and are current in liquidating the debt based on the arrangements made.

701—154.18(421) Release of information. The director may release the information, as the director deems necessary, as follows:

1. The director will issue a press release to the daily and weekly newspapers describing the manner in which a copy of the list of names for publication may be obtained. The director will make the list available in an electronic medium of the director's choice.

2. The director will release to credit reporting agencies the names selected for release for publication upon request. The names are to be released in the same electronic medium as the names are released to the press.

These rules are intended to implement Iowa Code Supplement sections 421.17 and 421.17A.

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CHAPTERS 155 to 210
Reserved

TITLE XIX
STREAMLINED SALES AND USE TAX RULES

CHAPTER 211
DEFINITIONS

This chapter includes cross references to provisions in 701—Chapters 15 to 20, 21, 26, 30, 32 and 33 that were applicable prior to July 1, 2004.

701—211.1(423) Definitions. The definitions set out in this chapter are applicable wherever the terms they define appear in this title unless the context indicates otherwise.

"Agent" means a person appointed by a seller to represent the seller before the member states.

"Agreement" means the streamlined sales and use tax agreement authorized by 2003 Iowa Acts, First Extraordinary Session, chapter 2, division XIV, to provide a mechanism for establishing and maintaining a cooperative, simplified system for the application and administration of sales and use taxes.

"Agricultural production" is limited to what would ordinarily be considered a farming operation undertaken for profit. The term "agricultural production" refers to the raising of crops or livestock for market on an acreage. See *Bezdek's Inc. v. Iowa Department of Revenue* (Linn County District Court, May 14, 1984). Included within the meaning of the phrase "agricultural production" is any feedlot operation whether or not the land upon which a feedlot operation is located is used to grow crops to feed the livestock in the feedlot and regardless of whether or not the livestock fed are owned by persons conducting the feedlot operation, and operations growing and raising hybrid seed corn or other seed for sale to nurseries, ranches, orchards, and dairies. "Agricultural production" includes the raising of flowering, ornamental, or vegetable plants in commercial greenhouses or elsewhere for sale in the ordinary course of business. "Agricultural production" also includes any kind of aquaculture; commercial greenhouses; and raising catfish. Logging, production of Christmas trees, beekeeping, and the raising of mink, other nondomesticated furbearing animals, and nondomesticated fowl (other than ostriches, rheas, and emus) continue to be excluded from the term "agricultural production." The above list of exclusions and inclusions within the term "agricultural production" is not exhaustive. "Agricultural products" includes flowering, ornamental, or vegetable plants and those products of aquaculture.

"Business" means 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.

"Certificate of title" means a certificate of title issued for a vehicle or for manufactured housing under Iowa Code chapter 321.

"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.

"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.

"Chemical" means a substance which is primarily used for producing a chemical effect. A chemical effect results from a chemical process wherein the number and kind of atoms in a molecule are changed in form (e.g., where oxygen and hydrogen are combined to make water). A chemical process is distinct from a physical process wherein only the state of matter changes (e.g., where water is frozen into ice or heated into steam).

"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.

"Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

"Delivered electronically" means delivered to the purchaser by means other than tangible storage media.

"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.

"Department" means the department of revenue.

"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.

"Director" means the director of revenue.

"Domesticated fowl" means any domesticated bird raised as a source of food, either eggs or meat. "Domesticated fowl" includes, but is not limited to, chickens, ducks, turkeys, pigeons, ostriches, rheas, and emus which are raised for meat rather than for racing or as pets. Excluded from the meaning of "domesticated fowl" are nondomesticated birds, such as pheasants, raised for meat or any other purpose.

"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.

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

"Farm deer" means the same as defined in Iowa Code section 170.1.

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

"First use of a service" means 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.

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

"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.

"Implement of husbandry" means any tool, equipment, or machine necessary to the carrying on of the business of agricultural production and without which the work could not be done. *Reaves v. State,* 50 S.W.2d 286 (Tex. Crim. App. Ct. 1932). An airplane or helicopter designed for and used primarily in spraying or dusting of plants which are raised as part of agricultural production for market is an implement of husbandry.

"Installed purchase price" means 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 the building contractor's installing a foundation and electrical and plumbing hookups. "Installed purchase price" excludes any amount charged for landscaping in connection with the conversion.

"Lease or rental."

1. "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.

2. "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. Section 7701(h)(1).

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

- 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.

- 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 $100 or 1 percent of the total required payments.
- 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 paragraph, an operator must do more than maintain, inspect, or set up the tangible personal property.

4. This definition of "lease or rental" 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, or other provisions of federal, state, or local law.

"Livestock" means domestic animals which are raised on a farm as a source of food or clothing, *Van Clief v. Comptroller of State of Md.,* 126 A.2d 865 (Md. 1956) and *In the Matter of Simonsen Mill Inc.,* Declaratory Ruling of the State Board, Docket No. 211, April 24, 1980. "Livestock" includes cattle, sheep, hogs, goats, chickens, ducks, turkeys, ostriches, rheas, emus, bison, and farm deer. "Farm deer" is defined as set forth in Iowa Code section 170.1 and commonly includes animals belonging to the Cervidae family, such as fallow deer, red deer or elk and sika. However, "farm deer" does not include unmarked free-ranging elk. Fish and any other animals which are products of aquaculture are considered to be "livestock" as well.

Excluded from the term "livestock" are horses, mules, other draft animals, dogs, cats, and other pets. Also excluded from the term "livestock" are mink, bees, or other nondomesticated animals even if raised in captivity and even if raised as a source of food or clothing. Also excluded from "livestock" is any animal raised for racing.

"Manufactured housing" means "manufactured home" as defined in Iowa Code section 321.1.

"Manufacturer" means any person, firm, or corporation that purchases, receives, or holds personal property for the purpose of adding to its value by any process of manufacturing, refining, purifying, or combining of different materials or by packing of meats with an intent to sell at a gain or profit.

"Member state" means any state which has signed the agreement.

"Mobile home" means "manufactured or mobile home" as defined in Iowa Code section 321.1.

"Model 1 seller" means 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.

"Model 2 seller" means 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.

"Model 3 seller" means a seller that has sales in at least five member states, has total annual sales revenue of at least $500 million, 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.

"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.

"Not registered under the agreement" means lack of registration by a seller with the member states under the central registration system referenced in 2005 Iowa Code section 423.11, subsection 4.

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

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

"Plants" means fungi such as mushrooms, crops commonly grown in this state such as corn, soybeans, oats, hay, alfalfa hay, wheat, sorghum, and rye. Also included within the meaning of the term "plants" are flowers, small shrubs, and fruit trees. Excluded from the meaning of the term "plants" are fir trees raised for Christmas trees and any trees raised to be harvested for wood.

"Prewritten computer software" means 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, still is classified as 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.

"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:

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

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

"Purchase price" means the same as "sales price" as defined in this rule.

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

"Reagent" means a substance used for various purposes (i.e., in detecting, examining, or measuring other substances, in preparing materials, in developing photographs) because it takes part in one or more chemical reactions or biological processes. A reagent is also a substance used to convert one substance into another by means of the reaction that it causes. To be a reagent for purpose of the exemption, a substance must be primarily used as a reagent.

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

1. Taking possession of tangible personal property.
2. Making first use of a service.
3. 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.

"Registered under the agreement" means registration by a seller under the central registration system referenced in 2005 Iowa Code section 423.11, subsection 4.

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

"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, pay television, 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 these rules to regard any salespersons, representatives, truckers, peddlers, or canvassers as agents of the dealers, distributors, supervisors, employers, or persons under whom the salespersons, representatives, truckers, peddlers, or canvassers 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 these rules. "Retailer" includes a seller obligated to collect sales or use tax.

"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 Iowa Code chapter 490.

"Retailer's price" means the total amount of consideration, including cash, credit, property, and services, valued in money, which a retailer states must be paid before the personal property or services offered by the retailer are sold or furnished, without deduction for one or more of the items mentioned in paragraph *"b"* of the definition of "sales price."

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

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

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

"Sales price" means 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 2005 Iowa Code section 423.3, subsection 58.

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. The amounts received for charges included in paragraph *"a,"* paragraphs "3" through "7," if they are separately contracted for and 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.
5. 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 paragraph does not apply to coupons issued by manufacturers, distributors, or wholesalers to consumers.

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

"Sales tax" means the tax levied under 2005 Iowa Code sections 423.2 to 423.4.

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

"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 2005 Iowa Code 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.

"Services used in the processing of tangible personal property" means 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.

"Solvent" means a substance in which another substance can be dissolved and which is primarily used for that purpose.

"Sorbent" means a solid material, often in a powder or granular form, which acts to retain another substance, usually on the sorbent's surface, thereby removing the other substance from the gas or liquid phase. The sorbent and the second material bond together at the molecular or atomic scale via physiochemical interactions. A substance is not a sorbent based on an ability to absorb heat or thermal energy.

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

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

"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.

"Tax" means the tax upon retail sales or use of tangible personal property or taxable services.

"Taxpayer" means any person who is subject to Iowa sales and use tax, whether acting on the person's own behalf or as a fiduciary.

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

"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.

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

"Use tax" means the tax levied under 2005 Iowa Code chapter 423, subchapter III, for which the retailer collects and remits tax to the department.

"Value of services" means the price to the user exclusive of any direct tax imposed by the federal government or under these rules.

"Vehicles subject to registration" means any vehicle subject to registration pursuant to Iowa Code section 321.18.

This rule is intended to implement 2005 Iowa Code Supplement chapter 423.

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CHAPTER 212
ELEMENTS INCLUDED IN AND EXCLUDED FROM A TAXABLE SALE AND SALES PRICE

Rules in this chapter include cross references to provisions in 701—Chapter 26 that were applicable prior to July 1, 2004.

701—212.1(423) Tax not to be included in price. When a retailer prices an article for retail sale and displays or advertises the same to the public with that price marked, the price so marked or advertised shall include only the sales price of such article unless it is stated on the price tag that the price includes tax.

EXAMPLE. The advertised or marked price is $1. When a sale is made, the purchaser pays or agrees to pay $1.05, which represents the purchase price plus tax, which, when added, becomes a part of the sale price or charge.

This rule does not prohibit advertising or displaying the sale price plus tax or the price including tax, as shown in the following examples:

"This dress—$10 plus tax"; "This dress—$10 plus 50 cents tax"; or "This dress—$10.50 including tax."

When a retailer conspicuously advertises in such manner and position so that it may be readily seen and read by the public that the price "includes tax," the retailer will be allowed to determine sales price by dividing the total of such retailer's price which includes tax by the applicable percentage. For example, a retailer in a jurisdiction that has the state sales tax plus a 1 percent local option tax would use a factor of 106 percent.

However, where an invoice is given to the purchaser as a part of the sale, either the invoice must show the tax separately from the retailer's price or it must be stated on each invoice that tax is included in the retailer's price. If the invoice states "tax included," the seller may determine sales price by the applicable percent method described above. It shall be the responsibility of the retailer that uses or has used the applicable percent method for reporting to provide proof that the retailer has complied with the method of advertising or displaying the retailer's price, as described above.

This rule is intended to implement Iowa Code sections 423.14 and 423.24.

701—212.2(423) Finance charge. Interest or other types of additional charges that result from selling on credit or under installment contracts are not subject to sales tax when such charges are separately stated and when such charges are in addition to an established cash sales price. However, if finance charges are not separately stated and a sale is made for a lump sum amount, the tax is due on the total retailer's price.

When interest and other types of additional charges are added as a condition of a sale in order to obtain title rather than as a charge to obtain credit where title to goods has previously passed, such charges will be subject to tax even though they may be separately stated. *State ex rel. Turner v. Younker Bros., Inc.*, 210 N.W.2d 550 (Iowa 1973); *Road Machinery Supplies of Minneapolis, Inc. v. The Commissioner of Revenue*, Minnesota Tax Court of Appeals, 1977, 2 Minn. CCH State Tax Reporter II 200-835, 1977 WL 963 (Minn. Tax.). See rule 701—213.3(423) relating to conditional sales contracts.

This rule is intended to implement Iowa Code section 423.1(47)*"b"*(2).

701—212.3(423) Retailers' discounts, trade discounts, rebates and coupons.

212.3(1) *Retailers' discounts.* A retailer's discount reduces the retailer's price of a property or service with the remainder being the actual sales price of the goods charged in the account. The purchaser entitled to the discount will never owe the retailer's price as a debt, the debt being the sales price after the agreed discount has been deducted. The word "discount" means "to buy at a reduction." *Benner Tea Company v. Iowa State Tax Commission*, 252 Iowa 843, 109 N.W.2d 39 (1961).

Any discount a retailer allows that reduces a retailer's price to a sales price is a proper deduction when collecting and reporting tax. This is not the case when the retailer offers a discount to a purchaser

but bills and collects tax on the retailer's price rather than on the sales price. The customer must receive the benefit of the discount, for sales tax purposes, in order for the retailer to exclude the discount from the sales price when collecting and reporting tax.

Certain retailers bill their customers on a gross and net basis, with the difference considered to be a discount for payment purposes. When a customer does not resolve the bill within the net payment period, tax shall apply on the gross charge shown on the billing, the gross charge having become the taxable sales price by virtue of the customer's failure to take the action which allows the discount to be taken.

212.3(2) *Rebates.* A "rebate" is a return of part of an amount paid for a product. Manufacturers' rebates are not discounts and cannot be used to reduce the sales price received from a sale or to reduce the purchase price of a product. This subrule applies even though the rebate is used by the retailer to reduce the retailer's price to a sales price or is used by the purchaser as a down payment. The rebate is considered a transaction between the manufacturer and the purchaser. See 1972 O.A.G. 332.

212.3(3) *Coupons.* Coupons issued by the producer of a product are not discounts and cannot be used as an abatement from the retailer's price of the product. Coupons issued by the retailer which actually reduce the price of the product to the purchaser are treated as a discount as provided in subrule 212.3(1). *Saxon-Western Corporation v. Mahin*, 369 N.E.2d 1185 (Ill. 1979).

EXAMPLE 1. C acquires a 30¢ off coupon issued by manufacturer of A-B Bandaids for A-B Bandaids. The coupon can be redeemed at a store which sells the product. C goes to store D and purchases a box of A-B Bandaids which shows a price of $1.50. C pays $1.20 plus the 30¢ coupon. D is reimbursed the 30¢ for the coupon by the manufacturer. Tax is due on the $1.50 because D's total sales price is $1.50. The coupon is not used as a discount in this situation.

EXAMPLE 2. E offers a two-for-the-price-of-one coupon for its super hamburger. Each hamburger normally sells for $2. The coupon can only be redeemed at E's retail store. F acquires the coupon and redeems it at E's store. The purchase price for F was $2 for both hamburgers. The tax is due on the $2 because this amount is the sales price for E, even though the value of the two hamburgers would normally be $4. In this situation, the sales price for the two hamburgers is $2.

212.3(4) *Trade discounts.* A "trade discount" is a discount from a seller's list price which is offered to a class or category of customer, e.g., retailers or wholesalers. 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 a manufacturer's, distributor's, or wholesaler's product (e.g., cigarettes) or to promote the sale or recognition of the manufacturer's, distributor's, or wholesaler's product are not to be included in any taxable sales price. This subrule does not apply to coupons issued by manufacturers, distributors, or wholesalers to consumers; see subrule 212.3(3).

This rule is intended to implement Iowa Code section 423.1(47)*"b"*(1).

701—212.4(423) Excise tax included in and excluded from sales price.

212.4(1) An excise tax which is not an Iowa sales or use tax may be excluded from the sales price or purchase price of the sale or use of property or taxable services only if all of the following conditions exist:

a. The excise tax is imposed upon the identical sales price on which the Iowa sales tax is imposed or upon the purchase price which measures the amount of taxable use or upon a use identical to the Iowa taxable use and not upon some event or activity which precedes or occurs after the sale or use.

b. The legal incidence of the excise tax falls upon the purchaser who is also responsible for payment of the Iowa sales tax. The purchaser must be obligated to pay the excise tax either directly to the government in question or to another person (e.g., the retailer) who acts as a collector of the tax. See *Gurley v. Rhoden*, 421 U.S. 200, 95 S. Ct. 1605, 44 L.Ed.2d 110 (1975) for a description of the circumstances under which the legal, as opposed to the economic, burden of an excise tax falls upon the purchaser.

c. The name of the excise tax is specifically stated, and the amount of the excise tax is separately set out on the invoice, bill of sale, or another document which embodies a record of the sale.

EXAMPLE 1. The federal government imposes an excise tax upon the act of manufacturing tangible personal property within the United States. The amount of the tax is measured as a percentage of the price for the first sale of the property, which is usually to a wholesaler. However, one particular manufacturer sells its manufactured goods at retail in Iowa. Even if this tax meets the requirements for exclusion of paragraphs *"b"* and *"c"* above, it is not excludable because it does not meet the requirements of paragraph *"a."* The tax is not imposed upon the act of selling but upon the prior act of manufacturing. The tax is merely measured by the amount of the proceeds of the sale.

EXAMPLE 2. The federal government imposes an excise tax of 4 percent on a retailer's sales price from sales of tangible personal property. The law allows the retailer to separately identify and bill a customer for the tax. However, if a retailer fails to pay the tax, the government cannot collect it from a purchaser, and if the government assesses tax against the retailer and secures a judgment requiring the retailer to pay the tax, the retailer that has failed to collect the tax from a purchaser on the initial sale has no right of reimbursement from the purchaser. This tax is not excludable from Iowa excise tax. Its economic burden falls upon the purchaser. However, since neither the government nor the retailer has any legal right to demand payment of the tax from a purchaser, the legal incidence of the tax is not upon the purchaser; and the tax would not meet the requirements of paragraph *"b"* above.

212.4(2) The following federal excise taxes are to be included in the sales price upon which Iowa sales tax is to be paid for purposes of collecting Iowa sales tax:

a. The federal gallonage taxes imposed by 26 U.S.C. Sections 5001, 5041, and 5051 on distilled spirits, wines, and beer.

b. The tax imposed by 26 U.S.C. Section 5701 with regard to cigars, cigarettes, cigarette papers and tubes, smokeless tobacco, and pipe tobacco.

c. The federal tax imposed under 26 U.S.C. Section 4081 on gasoline.

d. The federal tax imposed by 26 U.S.C. Section 4071 which expires October 1, 2005, on tires.

212.4(3) The following excise taxes are excluded from the amount of the sales price:

a. The federal tax imposed by 26 U.S.C. Section 4251(a) on the communication services of local telephone service, toll telephone service, and teletypewriter exchange service.

b. The federal tax imposed by 26 U.S.C. Section 4051 upon the first retail sale of automobile and truck chassis and bodies; truck trailer and semitrailer chassis and bodies and tractors of the kind chiefly used for highway transportation in combination with trailers or semitrailers.

This rule is intended to implement Iowa Code section 423.1(47)*"b"*(3).

701—212.5(423) Trade-ins.

212.5(1) Trade-ins. When tangible personal property is traded toward the purchase price of other tangible personal property, the sales price shall be only that portion of the purchase price which is payable in money to the retailer if the following conditions are met:

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

b. The tangible personal property traded to a retailer is intended by the retailer to be ultimately sold at retail; or

c. The tangible personal property traded to a retailer is intended to be used by the retailer or another in the remanufacturing of a like item.

EXAMPLE 1. A owns a car valued at $5,000. A trades his used car to XY car dealer for a used car valued at $12,000. XY car dealer normally sells used cars. Use tax would be due on the $7,000 in money which A paid to XY car dealer, as both conditions *"a"* and *"b"* have been met.

EXAMPLE 2. John Doe has a pickup truck with a value of $2,000. John wants a boat, so he offers to trade his $2,000 pickup to ABC boat dealer for the purchase of a boat valued at $5,000. ABC boat dealer is a new and used boat dealer. ABC boat dealer agrees to accept the $2,000 pickup and $3,000 cash in trade for the boat. In this example, the tax would be computed on $5,000. The trade-in provision

would not apply because condition *"a"* has not been met. The property traded is not the type of property normally sold by ABC boat dealer in the regular course of the boat dealer's business.

EXAMPLE 3. ABC Corporation trades 500 bushels of corn and $500 cash to the local cooperative elevator for the purchase of various hand tools. In its regular course of business, the local cooperative elevator sells grain for processing into bread. The trade-in provision in this example would not apply because condition *"b"* has not been met. When ultimately sold by the cooperative elevator, the grain traded toward the purchase price of the hand tools is sold for processing and not at retail.

EXAMPLE 4. Hometown Appliance store is in the business of selling stoves, refrigerators, and other various appliances in Iowa. Hometown Appliance has a refrigerator valued at $650. Customer A wishes to trade a used refrigerator toward the purchase price of the new refrigerator. Hometown Appliance agrees to accept A's used refrigerator at a value of $150 toward the purchase price of the new refrigerator. A pays Hometown Appliance $500 in cash. The trade-in provision applies as both conditions *"a"* and *"b"* have been met, and tax would be due on the $500.

Several months later, Hometown Appliance sells the used refrigerator it received from customer A to the local school district, which is exempt from sales tax on its purchase. The trade-in provision on the original transaction is still applicable because both conditions *"a"* and *"b"* were met. The sale is "at retail," even if the sales price is exempt from tax.

EXAMPLE 5. ABC Auto Supply is in the business of selling various types of automobile and farm implement supplies. The normal selling price for a car generator is $80. ABC Auto Supply allows a $20 trade-in credit to any customer who wishes to trade in an unworkable generator. At the time ABC Auto Supply accepts the unusable generator, it knows that the generator will not be sold at retail; however, ABC Auto Supply also knows that the generator will be sold to XYZ Company, which is in the business of rebuilding generators by using existing parts plus new parts. In this example, the trade-in provision would apply since conditions *"a"* and *"c"* have been met.

212.5(2) All the provisions of subrule 212.5(1) apply to the trade-in of vehicles subject to registration when the trade involves retailers of vehicles.

When vehicles subject to registration are traded among persons who are not retailers of vehicles subject to registration, the conditions set forth in 212.5(1) need not be met. The purchase price is only that portion of the purchase price represented by the difference between the total purchase price of the vehicle subject to registration acquired and the value of the vehicle subject to registration traded.

This rule applies only when a vehicle is traded for tangible personal property, regardless of whether the transaction is between a retailer and a nonretailer or between two nonretailers. The vehicle traded in must be owned by the person(s) trading in the vehicle. It is presumed that the name or names indicated on the title of the vehicle dictate ownership of the vehicle as set forth in Iowa Code chapter 321.

EXAMPLE 1. John Doe has an automobile with a value of $2,000. John and his neighbor Bill Jones, who has an automobile valued at $3,500, decide to trade automobiles. John pays Bill $1,500 cash. Vehicles subject to registration are subject to use tax, which is payable to the county treasurer at the time of registration. In this example, John would owe use tax on $1,500 since this is the amount John paid Bill and tax is only due on the cash difference. Bill would not owe any use tax on the vehicle acquired through the trade.

EXAMPLE 2. Joe has a Ford automobile with a value of $5,000. Joe and his friend Jim, who has a Chevrolet automobile also valued at $5,000, decide to trade automobiles. Joe and Jim make an even trade, automobile for automobile, with no money changing hands. In this example, there is no tax due on either automobile because there is no exchange of money.

212.5(3) Trade for services. The trade-in provisions referenced in Iowa Code section 423.1(47)*"a"*(7) and found in Iowa Code section 423.3(59) do not apply to taxable enumerated services. When taxable enumerated services are traded, the sales price would be determined based on the value of the service or other consideration.

EXAMPLE. A and B agree that A will purchase a car which B now owns. The two parties agree on a purchase price of $9,000. In return for transfer of title from B, A agrees to pay B $7,000 in cash and to paint B's house with paint provided by B. A and B agree that the value of B's house painting services is $2,000. House painting is a taxable enumerated service; reference rule 701—26.34(422). Since the

trade-in provisions are not applicable to the value of taxable enumerated services, the purchase price of the car is $9,000 and not $7,000.

212.5(4) Three-way trade-in transactions. In a three-way transaction, the agreement provides that a lessee sell to a third-party dealer a vehicle (or other tangible personal property) which the lessee owns. The lessor then purchases another vehicle from the third-party dealer at a reduced price and leases the vehicle to the lessee. The difference between the reduced sale price and retail price of the vehicle is not allowed as a trade-in on the vehicle for use tax purposes.

EXAMPLE. A enters into a three-way agreement with B, the lessor. Under the terms of the contract, A sells a 2005 Ford Taurus owned by A to C, a used car dealer. The retail price for the Ford Taurus is $30,000. C then sells the Ford Taurus to B for the reduced price of $25,000. B then leases the Ford Taurus to A for a period of 12 months. The $5,000 difference between the reduced sale price and the retail price of the vehicle is not allowed as a trade-in on the sale of the vehicle for use tax purposes. See also *Reynolds Motor Co. et al. v. Iowa Dep't. of Revenue*, Equity 72050, Dist. Ct. of Scott Cty., Iowa, August 28, 1987.

This rule is intended to implement Iowa Code sections 423.1(47)*"a"*(7) and 423.3(59).

701—212.6(423) Installation charges when tangible personal property is sold at retail. When the sale of tangible personal property includes a charge for installation of the personal property sold, the current rate of tax shall be measured on the entire sales price from the sale. The installation charges would not be taxable if the installation service is not an enumerated service, and where a sales agreement exists, the installation charges are separately contracted. If the written contract contains no provisions separately itemizing such charges, tax is due on the full contract price with no deduction for installation charges, whether or not such installation charges are itemized separately on the invoice.

If the installation services are enumerated services, the installation charges would not be taxable if (1) the services are exempt from tax (e.g., the services are performed on or connected with new construction, reconstruction, alteration, expansion or remodeling of a building or structure); or the services are rendered in connection with the installation of new industrial machinery or equipment, and (2) where a sales agreement exists, the installation charges are separately contracted. If the written contract contains no provisions separately itemizing such charges, tax is due on the full contract price with no deduction for installation charges, whether or not such installation charges are itemized separately on the invoice. If no written contract exists, the installation charges must be separately itemized on the invoice to be exempt from tax. See rule 701—219.13(423).

This rule is intended to implement Iowa Code sections 423.1(47)*"a"*(5) and 423.1(47)*"b"*(4).

701—212.7(423) Service charge and gratuity. When the purchase of any food, beverage or meal automatically and invariably results in the inclusion of a mandatory service charge to the total price for such food, beverage or meal, the amounts so included shall be subject to tax. The term "service charge" means either a fixed percentage of the total price of or a charge for food, a beverage or a meal.

The mandatory service charge shall be considered: (1) a required part of a transaction arising from a taxable sale and a contractual obligation of a purchaser to pay to a vendor a charge arising directly from and as a condition of the making of the sale and (2) a fixed labor cost included in the price for food, a beverage or a meal even though such charge is separately stated from the charge for the food, beverage or meal.

When a gratuity is voluntarily given for food, a beverage or a meal, it shall be considered a tip and not subject to tax. *Cohen v. Playboy Club International, Inc.*, 19 Ill. App. 3d 215, 311 N.E.2d 336; *Baltimore Country Club, Inc. v. Comptroller of Treasury*, 272 Md. 65, 321 A.2d 308.

This rule is intended to implement Iowa Code sections 423.1(47) and 423.2(1).

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CHAPTER 213
MISCELLANEOUS TAXABLE SALES

Rules in this chapter include cross references to provisions in 701—Chapters 15 and 18 that were applicable prior to July 1, 2004.

701—213.1(423) Tax imposed. The Iowa state retail sales tax is imposed at the rate of 5 percent of the sales price from the sale at retail of tangible personal property and certain enumerated services. The rules in this chapter deal with certain specific attributes of the Iowa state retail sales tax, but such rules are by no means exclusive in explaining what are taxable sales and are not exclusive in explaining which transactions constitute taxable sales. There are other transactions which constitute taxable sales under the law and which are not specifically dealt with in these rules.

This rule is intended to implement Iowa Code section 423.2.

701—213.2(423) Athletic events. The sales price from the sale of tickets or admissions to athletic events occurring in the state of Iowa and sponsored by educational institutions, without regard to the use of the proceeds from such sales, shall be subject to tax, except when the events are sponsored by elementary and secondary educational institutions.

This rule is intended to implement Iowa Code section 423.2(3).

701—213.3(423) Conditional sales contracts. Iowa Code section 423.1(46) defines sales to include "conditional sales." A conditional sale is a sale in which the vendee receives the right to the use of the goods which are the subject matter of the sale, but the transfer of title to the vendee is dependent on the performance of some condition by the vendee, usually the full payment of the purchase price.

Conditional sales in most cases are evidenced by the facts supporting the nature of the vendor's business, the intent of the parties, and the facts supporting the control over the tangible personal property by the vendee. A conditional sales contract would exist where: the vendee/lessee has total control over the property and is responsible for all losses or damages; the transfer of the property is complete except for title, which passes upon the condition of full payment; and where such full payment is performed under nearly all the vendor's "lease" agreements, except in cases of default; and the vendor has no intent of retaining control over the property except for purposes of selling it or financing it for sale. In determining whether an agreement constitutes a conditional sale or a true lease, substance shall prevail over form, and the terminology of the written agreement will be considered only to the extent that it accurately represents the true relationship of the parties.

When a conditional sale exists, the seller shall bill the purchaser for the full amount of tax due, and sales tax is due on the full contract price upon delivery of the property which is the subject of the contract. *Harold D. Sturtz v. Iowa Department of Revenue*, 373 N.W.2d 131 (Iowa 1985). No further tax is due on the periodic payments. Interest and finance charges shall not be considered part of the sales price if they are separately stated and reasonable in amount and are, therefore, not subject to tax. *State ex rel. Turner v. Younker Bros., Inc.*, 210 N.W.2d 550, 562 (Iowa 1973).

This rule is intended to implement Iowa Code sections 423.1(46) and 423.2(1).

701—213.4(423) The sales price of sales of butane, propane and other like gases in cylinder drums, etc. Sales of butane, propane and other like gases in cylinder drums and other similar containers purchased for cooking, heating and other purposes shall be taxable. However, see rule 701—231.16(423), which provides for a phase-out of and eventual complete exemption from tax for propane and other gases sold for use in residential heating.

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

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

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

This rule is intended to implement Iowa Code sections 423.1(46) and 423.2(1).

701—213.5(423) Antiques, curios, old coins, collector's postage stamps, and currency exchanged for greater than face value. Curios, antiques, art work, coins, collector's postage stamps and such articles sold to or by art collectors, philatelists, numismatists and other persons who purchase or sell such items of tangible personal property for use and not primarily for resale are sales at retail, and their sales price shall be subject to tax.

213.5(1) The sales price of stamps, whether canceled or uncanceled, which are sold by a collector or person engaged in retailing stamps to collectors shall be taxable.

213.5(2) The distinction between stamps which are purchased by a collector and stamps which are purchased for their value as evidence of the privilege of the owner to have certain mail carried by the United States government is that which determines whether or not the sales price of a stamp is taxable or not taxable. A stamp becomes an article of tangible personal property having market value when, because of the demand, it can be sold for a price greater than its face value. On the other hand, when a stamp has only face value, as evidence of the right to certain services or an indication that certain revenue has been paid, its sales price shall not be subject to either sales or use tax.

213.5(3) The sales price from any exchange, transfer, or barter of merchandise for a consideration paid in gold, silver, or other coins or currency shall be subject to tax to the extent of the agreed-upon value of the coins or currency so exchanged. This agreed-upon value constitutes the sales price or purchase price subject to tax. Currency or coins become articles of tangible personal property having a value greater than face value when the currency or coins are exchanged for a price greater than face value. However, when a coin or other currency, in the course of circulation, is exchanged at its face value, the sales price of the sale shall be subject to tax for the face value alone. *Losana Corp. v. Porterfield*, 14 Ohio St.2d 42, 236 N.E.2d 535 (1968).

EXAMPLE 1. Taxpayer operates a furniture store. The taxpayer offers to exchange furniture for silver coins at ten times the face value of any coins dated prior to January 1, 1965. Upon any exchange pursuant to the offer, the value of the coins for purposes of determining the tax on the exchange will be equivalent to the value as agreed upon by the parties, without regard to the face value of the coins.

EXAMPLE 2. Taxpayer operates a hardware store. In the regular course of business, the taxpayer receives silver coins dated prior to January 1, 1965. Taxpayer has received the coins at face value for the sales price and only that value is subject to tax. Also see Attorney General Opinion Griger to Bair, Director of Revenue, May 15, 1980, #80-5-13.

This rule is intended to implement Iowa Code sections 423.1(47), 423.2(1) and 423.5.

701—213.6(423) Communication services furnished by hotel to its guests. As a common practice, hotels in the state of Iowa purchase telephone communication services from telephone companies and furnish those services to the guests of the hotel. The hotel makes a charge for this communication service to its guests in an amount which exceeds the cost of such service to it from the telephone company. Tax shall apply to the entire charge which the hotel makes to its guests for such communication service, regardless of whether a guest's calls are local or long-distance within the state. However, the hotel would purchase any communication service which it furnishes for a charge to a guest exempt from tax as a service purchased for subsequent resale.

This rule is intended to implement Iowa Code section 423.2(2).

701—213.7(423) Consignment sales. When a retailer receives tangible personal property on consignment from others and the consigned merchandise is sold in the ordinary course of business with other merchandise owned or services performed by the retailer, the retailer or consignee shall be making sales at retail. In these cases, the consignee shall file a return and remit tax to the department along with the returns and remittances of tax on the sales price from the sale of other merchandise.

The sales price of sales of tangible personal property by an agent or consignee for another person shall be exempt if the sales meet the requirements of a casual sale or any other exemptions.

This rule is intended to implement Iowa Code section 423.2(1).

701—213.8(423) Electrotypes, types, zinc etchings, halftones, stereotypes, color process plates, wood mounts and art productions. The sales price of electrotypes, types, zinc etchings, halftones, stereotypes, color process plates, wood mounts and art productions shall be subject to tax when sold to users or consumers. Reference rule 701—18.33(422,423) for sales to printers. The listed articles do not become an integral or component part of merchandise intended to be sold ultimately at retail. *Long v. Roberts & Son*, 234 Ala. 570 176 So. 213 (1937); *People ex rel. Walker Engraving Corporation v. Groves*, 268 N.Y. 648, 193 N.E. 539 (1935).

This rule is intended to implement Iowa Code sections 423.2(1) and 423.3(51).

701—213.9(423) Explosives used in mines, quarries and elsewhere. A person engaged in the business of selling explosives to miners, quarries or others shall be subject to sales tax on the sales price from the sale of such property at retail in Iowa. The purchaser shall be liable for use tax upon all purchases for use in Iowa not subject to sales tax. *Linwood Stone Products Company v. State Department of Revenue, Iowa*, 175 N.W.2d 393 (1970).

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

701—213.10(423) Sales on layaway. The sales price from sales on layaway is subject to tax. A layaway sale involves two separate and distinct contracts. Under the first contract, the customer and the retailer enter into an agreement to give the customer an option to purchase a certain item of tangible personal property. Under the second contract, the sale of property takes place. During the period of the option to purchase, the item is placed aside "on layaway" and is not available for sale to the general public. This option to purchase is exercised by the customer's making one or more "layaway payments." The customer exercises the option to buy by completing the layaway payments. The last layaway payment is also the tendered payment under the separate contract for sale of the property. The contract for sale is complete when the seller delivers the property to the buyer. See *Holland v. Brown*, 15 Utah 2d 422, 394 P.2d 77 (1964) and *Sturtz v. Iowa Department of Revenue*, 373 N.W.2d 131 (Iowa 1985). Tax must be reported during the period (e.g., the quarter or month) in which delivery under the contract for sale portion of the layaway occurs. This will nearly always be the reporting period in which physical transfer of possession passes from the retailer to the buyer.

A sale on layaway should not be confused with a "conditional sale." The differences are these: (1) In a conditional sale, physical transfer of property occurs before, rather than after, the buyer makes all periodic payments necessary to purchase the property; and (2) in a conditional sale, physical possession of and title to the property pass to the buyer at different times. In a conditional sales situation, physical possession passes first; then after all periodic payments are made, title (ownership) passes to the buyer. In a layaway sale, both possession and title pass at the same time after all payments are made. The conditional sale is a much more common commercial arrangement than the sale on layaway.

This rule is intended to implement Iowa Code sections 423.1(46) and 423.2(1).

701—213.11(423) Memorial stones. Persons engaged in the business of selling memorial stones are selling tangible personal property, the sales price of which shall be subject to tax. When the seller of a memorial stone agrees to erect a stone upon a foundation, the total sales price from such sale shall be taxable. Any separately itemized charge for engraving is part of the taxable sales price of a memorial stone.

The sales price of any designs, lettering or engraving performed on a memorial stone or monument is also subject to tax. See *In Re Des Moines-Winterset Monuments, Inc.*, Docket No. 79-228-6A-DR, March 13, 1980.

This rule is intended to implement Iowa Code section 423.2(1).

701—213.12(423) Creditors and trustees. Pursuant to the provisions of any piece of chattel paper or any other document evidencing a creditor's interest in tangible personal property, the sales price from the sale of tangible personal property at a public auction shall be taxable even if the sale is made by virtue of a court decree of foreclosure by an officer appointed by the court for that purpose.

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

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

701—213.13(423) Sale of pets. A retailer selling pets shall procure a permit and report tax on the sales price from the sale of such pets.

This rule is intended to implement Iowa Code sections 423.1(54) and 423.2(1).

701—213.14(423) Redemption of meal tickets, coupon books and merchandise cards as a taxable sale. When meal tickets, coupon books, or merchandise cards are sold by persons engaged exclusively in selling taxable commodities or services, tax shall be levied at the time such items are redeemed by the customer. Tax shall not be added at the time of actual purchase of the meal ticket, coupon book, or merchandise card. When a retailer sells gift certificates, tax shall be added at the time the gift certificate is redeemed.

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

701—213.15(423) Rental of personal property in connection with the operation of amusements. The sales price from rental of tangible personal property in connection with the operation of amusements shall be taxable. Such rentals shall include all tangible personal property or equipment used by patrons in connection with the operation of commercial amusements, notwithstanding the fact that the rental of such personal property may be billed separately.

This rule is intended to implement Iowa Code section 423.2(1).

701—213.16(423) Repossessed goods. When tangible personal property which has been repossessed either by the original seller or by a finance company is resold to final users or consumers, the sales price from those sales is subject to tax.

A retailer repossessing previously sold merchandise shall be entitled to claim a credit on tax paid for bad debts in the same fashion as any other retailer that has paid tax to the department upon a sales price which ultimately constitutes a bad debt. Reference rule 701—15.4(422,423) for a description of the circumstances under which bad debts are and are not allowed as a credit on tax paid.

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

701—213.17(423) Sales of signs at retail. A person engaged in selling illuminated signs, bulletins, or other stationary signs (whether manufactured by that person or by others) to users or consumers is selling tangible personal property at retail. The sales price shall be taxable, even when the sales price of the sign includes a charge for maintenance or repair service in addition to the charge for the sign.

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

701—213.18(423) Tangible personal property made to order. When a retailer contracts to fabricate items of tangible personal property from materials available in stock or through placing orders for materials which have been selected by customers, all expenses and profits from the sale of such fabricated articles shall be included in the sales price. The retailer shall not deduct fabrication or production charges, even though such charges are separately billed.

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

701—213.19(423) Used or secondhand tangible personal property. The sales price on the sale of used or secondhand tangible personal property in the form of goods, wares, or merchandise shall be

taxable in the same manner as new property. This condition eliminates any consideration for secondhand merchandise to be treated differently than new merchandise when sold at retail for sales tax purposes.

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

701—213.20(423) Carpeting and other floor coverings. The sale of carpeting and other floor coverings to any person constitutes a sale at retail of tangible personal property, and the sales price of these sales is subject to sales or use tax unless the carpeting and other floor coverings are purchased for resale or are otherwise exempt from tax.

The sales price of floor coverings other than carpeting which are shaped to fit a particular room or area and which are attached to the supporting floor with cement, tacks, or by some other method making a permanent attachment with the building or structure are considered to be building materials and shall be taxable in the same manner as building materials which are used or consumed in the performance of a construction contract. See rule 701—219.2(423) and 701—subrule 219.3(3) for tax treatment.

The sale of carpeting is not to be treated as the sale of a "building material." The sales price of rugs, mats, linoleum, and other types of floor coverings which are not attached but which are simply laid on finished floors and are not considered building materials is subject to tax unless the floor coverings are purchased for resale or are otherwise exempt from tax.

The sale of "carpeting" to owners, contractors, subcontractors or builders is not the sale of a building material, but the sale of ordinary tangible personal property, which can be purchased for resale by owners, contractors, subcontractors or builders. "Carpeting" is any floor covering made of fabric, usually of wool or synthetic fibers. For purposes of this rule, "carpeting" also includes any pads, tack strips, adhesive, and other materials other than subflooring necessary for installation of the carpeting. Sellers of carpeting should charge purchasers sales tax unless the carpeting is purchased for resale or some other exempt purpose, in which case the purchaser must provide the seller with an exemption certificate upon demand.

The sales price of carpeting, with installation, is taxable in the following manner:

1. If separate contracts exist for the sale of the carpeting and for the installation, only the sales price of the carpeting is subject to tax.

2. If the selling price of the carpeting and the installation charge are stated as one charge or lump sum, the entire charge is subject to sales tax.

3. If the invoice itemizes the installation charge separately from the selling price of the carpet, only the selling price of the carpet is subject to sales tax if the installer and the purchaser of the carpet intend that a sale of the carpet shall occur. See 701—subrule 225.4(1) for more information.

In the following examples, assume that contractor A purchases carpeting from supplier B for installation in customer C's home. Whether or not A will purchase the carpeting from B for A's own consumption (and thus, A will pay the tax to B) or A will purchase the property from B for resale to C (and thus, C will pay the tax to A) depends upon any contracts existing between A (the contractor) and C (the customer).

EXAMPLE A. A contracts with C to install carpeting in C's home. Separate contracts exist between A and C for the sale of the carpeting and for its installation. Under these circumstances, A purchases the carpeting from B for resale to C. No tax is due upon the sales price of the transaction between A and B; tax is due upon A's resale of the carpet to C, but not upon A's charges for carpet installation, a nontaxable service.

EXAMPLE B. A charges C one lump sum for the carpeting and installation. In this case, A collects sales tax from C on the entire lump sum. The lump sum is treated, for sales tax purposes, as the sales price from the sale of tangible personal property; so A purchases the carpet from B for resale and without tax.

EXAMPLE C. A and C contract for the sale of the carpet separate from its installation. A sends C one invoice for the installation and sale of the carpet with the installation charge listed on the invoice separately from the selling price of the carpet. Under these circumstances, only the selling price of the carpet listed on the invoice is subject to sales tax and A purchases the carpet from B for resale and thus, without obligation to pay sales tax to B.

This rule is intended to implement Iowa Code section 423.2(1)*"b."*

701—213.21(423) Goods damaged in transit. If goods shipped by a retailer have been delivered under a contract for sale to a consumer, and thereafter the goods are damaged in the course of transit to the consumer, the retailer and purchaser shall be liable for tax upon the full sale price of the goods, as the sale to the consumer has been completed. *Harold D. Sturtz v. Iowa Department of Revenue*, 373 N.W.2d 131 (Iowa 1985).

If the goods have not been delivered to the consumer, the sale to the consumer has not been completed, and the retailer shall not be taxed for the amount agreed to be paid by the consumer.

EXAMPLE. A company in Chicago transports furniture in its own truck to customer B in Des Moines. Under the contract of sale, delivery of the furniture would occur in Des Moines and sales tax would ordinarily be due upon the sales price of the sale. However, in East Moline, Illinois, the furniture truck is involved in an accident, and B's furniture is destroyed. There was no delivery of the furniture to B, thus no sale to B and thus no sales tax is due. Had the point of delivery been Chicago, Illinois, a sale would have occurred outside this state, but no use tax would be due because B never made any "use" of the furniture in Iowa.

This rule is intended to implement Iowa Code section 423.2.

701—213.22(423) Snowmobiles, motorboats, and certain other vehicles. The sales price of snowmobiles, all-terrain vehicles, dirt bikes, race karts or go-carts, and motorboats shall be subject to tax when purchased and shall not be classified as vehicles subject to registration.

This rule is intended to implement Iowa Code chapter 423.

701—213.23(423) Photographers and photostaters. Tax shall apply to the sales price of photographs and photostat copies, whether or not produced to the special order of the customer, and to charges for the making of photographs or photostat copies out of materials furnished by the customer. A deduction shall not be allowed for the expenses incurred by the photographer, such as rental of equipment or salaries or wages paid to assistants or models, whether or not the expenses are itemized in billings to customers.

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

The sales price of photographs by a person engaged in the business of making and selling photographs to newspaper or magazine publishers for reproduction shall be taxable.

This rule is intended to implement Iowa Code sections 423.2 and 423.5.

701—213.24(423) Sale, transfer or exchange of tangible personal property or taxable enumerated services between affiliated corporations.

213.24(1) *In general.* The sales price of the sale, transfer or exchange of tangible personal property or taxable services among affiliated corporations, including but not limited to a parent corporation to a subsidiary corporation, for a consideration is subject to tax. A bookkeeping entry for an "account payable" qualifies as consideration as well as the actual exchange of money or its equivalent. The sales price of transactions between affiliated corporations may not be subject to tax where it can be shown that the affiliated corporations are operating as a unit within the meaning of Iowa Code sections 423.1(32) and 423.1(46).

213.24(2) *Affiliated corporations acting as a unit.* If an affiliated corporation acts as an agent for another affiliated corporation in a transaction listed in 213.24(1), the corporations may be considered as acting as a unit. There may not be taxable transactions between the affiliates, but this does not create an exemption for the purchase of tangible personal property or taxable services.

EXAMPLE. Corporation A and Corporation B are affiliated corporations. Corporation A is in the business of negotiation, arbitration, and mediation. Corporation B runs a fleet of taxis. Corporation A acts as Corporation B's agent in negotiating a contract between B and an outside third party C for C to do all of B's vehicle repair at a very favorable price. In spite of a bookkeeping entry listing a sale of the contract for repair from A to B, in securing the contract, the corporations have "acted as a unit," and

the "sale" from A to B is not subject to Iowa tax. However, any payments from A to C or from B to C in return for C's performance of taxable vehicle repair would be subject to tax, and C must collect Iowa sales tax on the sales price of those services.

This rule should not be equated with the unitary business concept used in corporation income tax law.

This rule is intended to implement Iowa Code sections 423.1(32) and 423.1(46).

701—213.25(423) Urban transit systems. A privately owned urban transit system which is not an instrumentality of federal, state or county government is subject to sales tax on fuel purchases which are within the urban transit system's charter.

Tax shall not apply to the sales price of fuel purchases made by a privately owned urban transit company for use outside the urban transit system charter in which a fuel tax has been imposed and paid and no refund has been or will be allowed.

Whether an urban transit company will be considered an instrumentality of federal, state or county government for the purpose of receiving sales tax exemption on its fuel purchases, which are also exempted from fuel tax and used for public purposes, depends upon consideration of the following:

1. Whether the urban transit system is created by government.
2. Whether the urban transit system is wholly owned by government.
3. Whether the urban transit system is operated for profit.
4. Whether the urban transit system is primarily engaged in the performance of some essential governmental function.
5. Whether the payment of tax will impose an economic burden upon the corporation, or whether payment of tax serves to materially impair the usefulness or efficiency of the corporation or the payment of tax materially restricts the corporation in the performance of its duties.

The considerations enumerated above are not all-inclusive, and the presence of some considerations and absence of others does not necessarily establish the exemption. Unemployment compensation of *North Carolina v. Wachovia Bank and Trust Company*, 2 S.E.2d 592, 595, 215 No. Car. 491 (1939); 1976 O.A.G. 823, 827, 828.

This rule is intended to implement Iowa Code sections 423.3(1) and 423.3(31).

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CHAPTER 214
MISCELLANEOUS NONTAXABLE TRANSACTIONS

Rules in this chapter include cross references to provisions in 701—Chapters 16 and 18 that were applicable prior to July 1, 2004.

701—214.1(423) Corporate mergers which do not involve taxable sales of tangible personal property or services. If title to or possession of tangible personal property or ownership of services is transferred from one corporation to another pursuant to a statutory merger, the transfer is not a "sale" in which the sales price is subject to tax if all of the following circumstances exist: (1) the merger is pursuant to statute (for example, Iowa Code section 490.1106); (2) by the terms of that statute, the title or possession of property or services transferred passes from a merging corporation to a surviving corporation and not for any consideration; and (3) the merging corporation is extinguished and dissolved the moment the merger occurs and, as a result of this dissolution, cannot receive any benefit from the merger.

Transactions which are not of the type described above may involve taxable sales. See the following court cases relating to this area: *Nachazel v. Mira Co Mfg.*, 466 N.W.2d 248 (Iowa 1991); *D. Canale & Co v. Celauro*, 765 S.W.2d 736 (Tenn 1989); and *Commissioner of Revenue v. SCA Disposal Services*, 421 N.E.2d 766 (Mass 1981).

EXAMPLE A. Nonaffiliated Corporations A and C enter into a voluntary merger agreement governed by Iowa Code section 490.1106. A and C are separate and independent, one from the other, and neither is a subsidiary of another corporation. No officer of the one is an officer of the other. A and C voluntarily negotiate an arms-length merger agreement which results in the transfer of A's assets to C and the dissolution of A. In return, A's stockholders receive stock in C. The sales price of A's transfer of tangible personal property to merged company C is not subject to sales or use tax.

EXAMPLE B. Corporations B, D, and E are independent entities. They enter into a merger agreement governed by Iowa Code section 490.1106 and agree to merge into one surviving corporation which will (after the dissolution of B and D) be E. They agree that the shares of merging corporations will be converted into shares of E on an equal basis. The sales price of the transfers of property by the corporations which are parties to the merger are not sales subject to Iowa tax.

EXAMPLE C. Corporation F receives all of Corporation G's outstanding shares from G's sole stockholder. In return, G's sole stockholder receives stock from F. After the transaction, Corporation G continues to exist as a subsidiary of Corporation F. This particular transaction involves a trade or barter of the stock shares of F and G. There is a barter of the stocks and thus a "sale" as that term is understood for the purposes of Iowa sales tax law. However, because the sale involves only intangible property (the stock shares), that sale is not taxable. The stock exchange transaction would not prevent taxation of subsequent transfers of tangible personal property or services between F and G.

EXAMPLE D. Corporation H buys all the assets of Corporation I, which include machinery, equipment, finished goods, and raw materials. Corporation H pays cash for these assets. This transaction does involve the sale of tangible personal property, and the sales price of the sale may be subject to Iowa sales tax. However, reference 701—subrule 18.28(2) concerning a casual sale exemption applicable to the liquidation of a business.

This rule is intended to implement Iowa Code section 423.1(46).

701—214.2(423) Sales of prepaid merchandise cards. Sales of prepaid merchandise cards (other than prepaid telephone calling cards (reference 701—subrule 16.51(3)) are not sales of tangible personal property and are not sales the sales price of which is subject to Iowa tax. If a purchaser uses a prepaid merchandise card to purchase taxable tangible personal property or taxable services, sales tax is computed on the sales price at the time of the sale and deducted from the prepaid amount remaining on the merchandise card.

EXAMPLE. Customer A purchases a prepaid merchandise card from ABC Clothing Company in the amount of $200. Customer A purchases a sweater for $50 from ABC Clothing Company. ABC Clothing

Company will debit A's card $52.50 ($50 × 1.05) for the state tax rate of 5 percent or $53 ($50 × 1.06) if one local option tax rate of 1 percent is applicable.

This rule is intended to implement Iowa Code sections 423.1(46) and 423.2(1).

701—214.3(423) Demurrage charges. Charges for returning tangible personal property after the agreed-upon date which are true demurrage charges supported by a written agreement do not constitute taxable sales and the charges are exempt from tax.

This rule is intended to implement Iowa Code section 423.1(47).

701—214.4(423) Beverage container deposits. Tax shall not apply to beverage container deposits. This rule is also applicable to all mandatory beverage container deposits required under the provisions of Iowa Code chapter 455C, including deposits on items sold through vending machines.

This rule is intended to implement Iowa Code chapter 455C.

701—214.5(423) Exempt sales by excursion boat licensees. The sales price of the following sales by licensees authorized to operate excursion gambling boats is exempt from Iowa sales and use tax: (1) charges for admission to excursion gambling boats, and (2) the sales price from gambling games authorized by the state racing and gaming commission and conducted on excursion gambling boats.

The sales price from charges other than those for admissions or authorized gambling games would ordinarily be taxable. The following is a nonexclusive list of taxable licensee sales: parking fees, sales of souvenirs, vending machine sales, prepared meals, liquor and other beverage sales, and the sales price from nongambling video games and other types of games which do not involve gambling.

This rule is intended to implement Iowa Code section 99F.10(6).

701—214.6(423) Advertising agencies, commercial artists and designers as an agent or as a nonagent of a client.

214.6(1) *In general.* A true agency relationship depends upon the facts with respect to each transaction. An agent is one who represents another, called the principal, in dealings with third persons. Advertising agencies, commercial artists, and designers may act as agents on behalf of their clients in dealing with third persons or they may act on their own behalf. To the extent advertising agencies, artists and designers act as agents of their clients in acquiring tangible personal property, they are neither purchasers of the property with respect to the supplier nor sellers of the property with respect to their principals.

When advertising agencies, commercial artists, and designers act as agents of their clients in purchasing property for their clients, the tax applies to the sales price from the sale of such property to the advertising agencies, commercial artists, and designers. Unless such advertising agencies, commercial artists and designers act as true agents, they will be regarded as the retailers of tangible personal property furnished to their clients and the tax will apply to the total sales price received for such property. Further, nothing in this rule should be construed to be in variance with the opinion of the Iowa Supreme Court in *Rowe v. Iowa State Tax Commission*, 249 Iowa 1207, 91 N.W.2d 548 (1958).

To establish that a particular acquisition is made in the capacity of an agent for a client, advertising agencies, commercial artists, and designers (collectively referred to herein as "agency") shall act as follows:

a. The agency must clearly disclose to the supplier the name of the client for whom the agency is acting as an agent.

b. The agency must obtain, prior to the acquisition, and retain written evidence of agent status with the client.

c. The price billed to the client, exclusive of any agency fee, must be the same as the amount paid to the supplier. The agency may make no use of the property for its own account, such as commingling the property of a client with another, and the reimbursement for the property should be separately invoiced or shown separately on the invoice to the client.

Some charges may represent reimbursement for tangible personal property acquired by the agency as agents for its clients and compensation for performing of agency services related thereto. When an advertising agency, commercial artist, or designer establishes that it has acquired tangible personal property as agents for its clients, tax does not apply to the charge made by the agency to its client for reimbursement charges by a supplier or to the charges made for the performance of the agency's services directly related to the acquisition of personal property.

Advertising agencies, commercial artists, and designers acting as agents shall not issue resale certificates to suppliers.

Advertising agencies, commercial artists, and designers act as retailers of all items of tangible personal property produced or fabricated by their own employees when they sell to their clients. Advertising agencies, commercial artists, and designers are not agents of their clients with respect to the acquisition of materials incorporated into items of tangible personal property prepared by their employees and sold at retail to their clients.

214.6(2) *Scope.* The scope of this rule is not confined simply to advertising agencies, commercial artists and designers, but also applies to all other businesses whose activities would bring them within the scope of this rule (e.g., printers).

This rule is intended to implement Iowa Code sections 423.2 and 423.5.

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CHAPTERS 215 to 218
Reserved

CHAPTER 219
SALES AND USE TAX ON CONSTRUCTION ACTIVITIES

Rules in this chapter include cross references to provisions in 701—Chapters 15 to 20, 21, 26, 30, 32 and 33 that were applicable prior to July 1, 2004.

701—219.1(423) General information. 2005 Iowa Code subsection 423.2(1) imposes a tax upon the sales price from the sales of tangible personal property, consisting of goods, wares or merchandise sold at retail in this state to consumers and users. Also subject to tax are certain enumerated services. Those services relating to the construction industry include carpentry; roof, shingle and glass repair; electrical repair and installation; excavating and grading; house and building moving; laboratory testing; landscaping; machinery operator services; machine repair of all kinds; oilers and lubricators; painting, papering, and interior decorating; pipe fitting and plumbing; wood preparations; termite, bug, roach, and pest eradicators; tin and sheet metal repair; welding; well drilling; and wrecking services. Under Iowa law, contractors are consumers or users of certain tangible personal property. Contractors may also be retailers of tangible personal property and taxable enumerated services. It should be noted that these services are exempt from taxation when performed on or in connection with new construction, reconstruction, alteration, expansion, or remodeling of a building or structure. The services of a general building contractor, architect or engineer are exempt from tax when performed on or in connection with new construction, reconstruction, alteration, expansion, or remodeling of a building or structure. For the purposes of this exemption, a structure is defined as that which is artificially built up or composed of parts joined together in some definite manner and which also has some obvious or apparent functional use or purpose. Nonexclusive examples of structures include buildings; roads, whether paved or otherwise; dikes; drainage ditches; and ponds. See rule 219.12(423) relating to structures.

This chapter details the obligation of contractors, contractor-retailers, retailers, and repairpersons to pay or collect sales tax on the sales price from sales of building materials, supplies, equipment, and other tangible personal property and the obligation of these parties to collect tax or claim exemption for their performances of taxable services. How one is classified, whether as a contractor, contractor-retailer, retailer, or repairperson is the basis for determining many of those obligations. It can be very difficult for a person starting a business to determine if that business will be engaged in contracting, retailing, a combination of the two, or providing repair services. However, one status must be chosen. Any reasonable assessment of a new business's status will be honored by the department. A status, once chosen, should not be changed, unless it has become clear from an extended course of dealing that the business has become something other than what it was established to be. For instance, if a business is founded to engage in contracting and purchases construction materials based on the fact that it is a contractor, but the founder must sell construction materials at retail if the business is to survive, and after two years' operation half the revenue is from construction contracts and half from retail sales, then the business has become a contractor-retailer and henceforth should purchase construction materials based on that status. Changing the status of a business from job to job to avoid the obligation to pay or collect tax is not a lawful activity.

2005 Iowa Code section 423.5 imposes a tax that is assessed upon tangible personal property purchased for use in this state and on taxable services which are rendered, furnished or performed in Iowa or where the product or result of such service is used in Iowa. "Use" of tangible personal property in Iowa is defined to mean and include the exercise by any person of any right or power over tangible personal property incident to the ownership of that property.

701—219.2(423) Contractors—consumers of building materials, supplies, and equipment by statute. 2005 Iowa Code subsection 423.2(1)*"b"* provides that 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 in whatever quantity sold. This means that a contractor, subcontractor, or builder cannot claim an exemption for resale when purchasing building materials or supplies even if the contractor, subcontractor, or builder later separately itemizes

material and labor charges for construction contracts. Building materials and supplies would generally consist of items which are incorporated into real property, lose their identity as tangible personal property and cannot be removed without altering the realty, or which are consumed by the contractor during the performance of the construction contract. See subrules 219.3(1), 219.3(2) and 219.3(3). Building equipment would ordinarily consist of machinery and tools. See subrule 219.3(4). The fact that a contractor, subcontractor or builder holds an Iowa retail sales tax permit and has a tax number does not entitle that person to purchase building materials, supplies and equipment without paying sales tax to the vendor. See rules 219.3(423) and 219.4(423).

When bidding on a contract, a contractor (general, special or subcontractor) should anticipate that sales or use taxes will increase the cost of materials by the tax unless the sponsor is a designated exempt entity; reference 701—subrule 19.12(5). The necessary allowance should be made in figuring the bid inasmuch as the contractor will be held responsible for paying the tax on building supplies, materials and equipment. The tax should not be identified as a separate item in the formal bid since the contractor cannot charge sales tax.

701—219.3(423) Sales of building materials, supplies, and equipment to contractors, subcontractors, builders or owners. Suppliers or dealers that sell materials and supplies to contractors, subcontractors, builders or owners are required to collect Iowa sales tax from those persons based upon the sales price from such sales. Reference 701—subrule 19.12(5), which deals with construction contracts with designated exempt entities, for an explanation of one of the few exceptions to this requirement. The fact that a contractor, subcontractor, or builder holds an Iowa retail sales tax permit and has a tax number does not entitle that person to purchase building materials, supplies and equipment without paying sales tax to the vendor. See rules 219.2(423) and 219.4(423). Materials purchased out of state for use in Iowa are subject to the Iowa use tax which is payable in the quarter that the materials are delivered into the state.

219.3(1) *Building materials.* The term "building materials" as used in this rule means materials used in construction work, and is not limited to materials used in constructing a building with sides and covering. The term may also include any type of materials used for improvement of the premises or anything essential to the completion of a building or structure for the use intended. *State v. James A. Head & Company, Inc.,* 306 So. 2d 5 (Ala. 1974).

219.3(2) *Building supplies.* The term "building supplies" as used in this rule means anything that is furnished for and used directly in the carrying on of the work of an owner, contractor, subcontractor or builder and which is used or consumed by the contractor. Such items do not have to enter into and become a physical part of the structure like building materials, but they do become as much a part of the structure as the labor which is performed on it. *United States Fidelity & Guaranty Co. v. Feenaughty Machinery Co.,* 85 P.2d 1085, 197 Wash. 569.

219.3(3) *Typical items.* While not intended to be inclusive, the following is a list of typical items regarded as building materials and supplies:

Asphalt
Bricks
Builders' hardware
Caulking material
Cement
Central air conditioning
Cleaning compounds
Conduit
Doors
Ducts
Electric wiring, connections, and switching devices
Fencing materials
Flooring[1]
Glass

Gravel
Insulation
Lath
Lead
Lighting fixtures
Lime
Linoleum[1]
Lubricants
Lumber
Macadam
Millwork
Modular and mobile homes
Mortar
Oil
Paint
Paper
Piping, valves, and pipe fittings
Plaster
Plates and rods used to anchor masonry foundations
Plumbing supplies
Polyethylene covers
Power poles, towers, and lines
Putty
Reinforcing mesh
Rock salt
Roofing
Rope
Sand
Sheet metal
Steel
Stone
Stucco
Tile
Wallboard
Wall coping
Water conditioners
Weather stripping
Windows
Window screens
Wire netting and screen
Wood preserver

219.3(4) *Building equipment.* The term "building equipment" as used in this rule means any vehicle, machine, tool, implement or other device used by a contractor in erecting structures for others, or reconstructing, altering, expanding or remodeling property of others which does not become a physical component part of the property upon which work is performed, and which is not necessarily consumed in the performance of such work. "Building equipment" includes, but is not limited to, such items as:

Compressors
Drill presses
Electric generators
Forms
Hand tools

Lathes
Replacement parts for equipment
Scaffolds
Tools
Vehicles including grading, lifting and excavating vehicles

Construction equipment purchased by a contractor which is intended for use in the performance of an Iowa construction contract is subject to the Iowa sales or use tax. Equipment which is rented for use on or in connection with an Iowa construction contract would normally be rented subject to tax. See rule 219.21(423) for an explanation of the existing exemption in favor of rented machinery used by a contractor on a job site.

[1] Floor coverings which are shaped to fit a particular room or area and which are attached to the supporting floor with cement, tacks or tack strips or by some other method making a permanent attachment are considered to be building materials. Reference rule 701—16.48(422,423) for an exception concerning carpeting. Carpeting (whether attached to the floor or not) is not treated as a building material for the purposes of this chapter. Rugs, mats and linoleum types of floor coverings which are not attached but which are simply laid on finished floors are also not considered to be building materials.

701—219.4(423) Contractors, subcontractors or builders who are retailers. In some instances, contractors, subcontractors and builders are in a dual business which includes reselling to the general public on a recurring "over-the-counter" basis the same type of building materials and supplies which are used by the contractors, subcontractors and builders in their own construction work. A person operating in such a manner is referred to in this rule as a contractor-retailer. Any person who is engaged in the performance of construction contracts and who also sells building materials or other items at retail is obligated to examine the person's business and determine if it is that of a contractor or a contractor-retailer. A sale by a contractor-retailer of building materials, supplies and equipment which does not provide for installation of the merchandise sold is considered a retail sale and subject to sales tax. Conversely, a sale by a contractor-retailer of building supplies, materials and equipment which provides for installation of the merchandise is considered a construction contract and tax shall be paid by the contractor-retailer based upon the cost of materials at the time the materials are withdrawn from inventory for use in a construction contract performed in Iowa. When a contractor-retailer does repair work, the contractor-retailer is acting as a retailer and not a contractor and must collect tax on the sales price charged for materials used in the repair and on the sales price charged for any labor used in the repair which is a taxable service or on the entire charge if materials and labor are not separately invoiced. Reference rule 701—18.31(422,423) and rule 219.13(423).

The following is a list of the characteristics of the usual contractor-retailer:

1. A contractor-retailer is a business which makes frequent retail sales to the public or to other contractors and also engages in the performance of construction contracts (see rule 219.8(423)). In determining whether a business is a contractor-retailer or a retailer only, the department looks to the totality of business activity and not only to one portion of the business's activity. Thus, the maintenance of a small retail outlet does not automatically transform a contractor-retailer into a retailer, and a large number of retail sales without a retail outlet can qualify a business as a contractor-retailer.

2. A business cannot claim the status of a contractor-retailer unless the business is in possession of a valid sales tax permit to report tax due from retail sales and from withdrawals of materials or supplies from inventory for use in construction contracts.

3. A contractor-retailer must purchase building materials, supplies, and equipment placed in its inventory for resale; the contractor-retailer should not pay sales or use tax to its suppliers for these items. Instead, the contractor-retailer should provide suppliers with valid resale exemption certificates. When a valid certificate is furnished, the vendor is relieved from the responsibility of collecting the tax if the purchaser has demonstrated that the purchaser is a contractor-retailer under the provisions of this rule. Reference rule 701—15.3(422,423) and rule 219.19(423) for a detailed explanation of this matter.

4. A contractor-retailer purchasing construction material which will not be placed in its inventory must purchase that material subject to Iowa sales or use tax. For example, if a contractor-retailer purchases wet concrete for use in a construction project, that purchase is taxable.

5. A contractor-retailer usually has a retail outlet, but if not, frequent sales to individuals or other contractors qualify a business as a contractor-retailer.

6. Contractor-retailers do not pay tax on materials withdrawn from inventory for use in construction projects performed outside Iowa. See 2005 Iowa Code subsection 423.2(1)*"b."*

The business records of a contractor-retailer must clearly reflect the use made of items purchased, and the records must be in such form that the director can readily determine that the proper sales and use tax liability is being reported and paid.

The following examples are offered to illustrate the responsibility for paying and remitting sales tax under this rule:

EXAMPLE 1. ABC Company operates a retail outlet that sells lumber and other building materials and supplies. ABC Company is also a contractor which builds residential and commercial structures. ABC Company would be considered a contractor-retailer and would, therefore, purchase all inventory items for resale. Those items which are used in the performance of a construction contract would be subject to tax in the period that they are withdrawn from inventory. The tax would be computed on the cost of the items withdrawn from inventory. Those items which are sold over the counter in the retail outlets would be subject to tax at the time of sale. The tax would be computed on the over-the-counter sales price.

EXAMPLE 2. EFG Company is a mechanical contractor and has no retail outlets. EFG Company rarely sells any of its inventory to other persons or to other contractors. EFG Company would not be considered a contractor-retailer under this rule. However, EFG Company would be considered a contractor and must pay tax to its vendor at the time it purchases any building materials, supplies and equipment. However, on those rare occasions when an inventory item is sold to another person or to another contractor, tax must be collected at the time of sale; therefore, EFG Company should have a sales tax permit. An adjustment can be made to the sales tax report by taking a credit for tax previously paid on the item sold.

EXAMPLE 3. Home Town Construction Company is owned and operated by two individuals in a rural Iowa farming community. They do not have a retail outlet but they frequently make sales of building materials which are in their inventory to local residents. Home Town Construction Company would be a contractor-retailer and could purchase all inventory items for resale. Those items which are used in the performance of a construction contract would be subject to tax in the period they are withdrawn from inventory. The tax would be computed on the cost of the items withdrawn from inventory. Those items which are sold to residents would be subject to the tax at the time of sale. The tax would be computed on the sales price of the items.

EXAMPLE 4. Down Home Construction Company is operated by two individuals in a rural Iowa farming community. They do not have a retail outlet and rarely make sales of building materials from their inventory to local residents. Down Home Construction Company would not be considered a contractor-retailer under this rule. Rather, Down Home Construction Company would be considered a contractor and must pay tax to its vendor at the time it purchases any building materials, supplies and equipment. When sales are made to local residents, tax must be collected at the time of sale; therefore, Down Home Construction Company should have a sales tax permit. However, Down Home Construction Company can adjust its sales tax report by taking a credit for tax paid to its vendor on an item sold to a local resident.

EXAMPLE 5. Intown Home Construction Company places modular homes on slabs or basement foundations; makes electrical, plumbing and other connections; and otherwise prepares the modular homes for sale as real estate. Intown also has a sales tax permit, maintains an inventory of modular homes for sale, and sells homes from the inventory as tangible personal property to owners who later convert the property to real estate. Intown is a contractor-retailer and is obligated to pay or collect sales tax, respectively, at the time a modular home is withdrawn from inventory for use as material in a construction contract or at the time a modular home is withdrawn from inventory for sale to an owner. See rule 701—231.11(423) for an explanation of the basis on which tax is computed.

EXAMPLE 6. Smith's Plumbing has a retail store in Davenport, but it also installs plumbing fixtures and lines in new construction and remodeling projects. Plumbing supplies that are taken from an

inventory in Davenport for a new home being built in Rock Island, Illinois, are withdrawn exempt from Iowa sales tax because the construction contract is performed outside Iowa. However, those supplies may be subject to Illinois sales or use tax.

701—219.5(423) Building materials, supplies, and equipment used in the performance of construction contracts within and outside Iowa.

219.5(1) The use of building materials, supplies, or equipment in the performance of construction contracts by the manufacturer outside Iowa is not a sale of tangible personal property and, therefore, is not a taxable event. The use of tangible personal property as building materials, supplies, or equipment by the manufacturer in the performance of construction contracts in Iowa is a sale at retail and a taxable event. The tax is computed on the manufacturer's fabricated cost or cost of production. See rule 219.6(423) for a characterization of the term manufacturer's "fabricated cost."

219.5(2) A contractor-retailer's withdrawal of materials from inventory for use in construction contracts outside this state is not a taxable event.

219.5(3) A contractor is a consumer by statute. A contractor's purchase of materials for use in a construction contract is subject to tax whether the materials are purchased for use in construction contracts performed in Iowa or outside this state.

219.5(4) A manufacturer's purchase of tangible personal property consumed as building material in the manufacturer's or the manufacturer's subcontractor's performance of construction contracts within Iowa is taxable. The tax is computed on the fabricated cost or cost of production of the materials. See rule 219.6(423) for a characterization of the term "fabricated cost." The purchase of tangible personal property consumed by a manufacturer as building material in the manufacturer's or the manufacturer's subcontractor's performance of a construction contract outside Iowa is not subject to tax.

219.5(5) Reference rule 701—32.8(423) for an exemption from use tax for building materials, supplies, or equipment purchased outside Iowa, brought into this state, and subsequently used in the performance of a construction contract outside this state.

701—219.6(423) Tangible personal property used or consumed by the manufacturer thereof. When a person who is primarily engaged in the manufacture of building materials, supplies, or equipment for sale and not for the person's own use or consumption, considering the totality of the business, from time to time uses or consumes the building materials, supplies, or equipment for construction purposes, the person is deemed to be making retail sales to one's self and subject to tax on the basis of the fabricated cost of the items so used or consumed for construction purposes. If equipment, building materials, or supplies are used by a manufacturer in the performance of a construction contract, a "sale" occurs only if the equipment, materials, or supplies are used in the performance of a construction contract in Iowa. For purposes of this rule, the term "fabricated cost" means and includes the cost of all materials as well as the cost of labor, power, transportation to the plant, and other plant expenses but not installation on the job site. *Associated General Contractors of Iowa v. State Tax Commission,* 255 Iowa 673, 123 N.W.2d 922 (1963). Also see rule 219.4(423) relating to contractors and rule 219.5(423) relating to materials, supplies, and equipment used in construction contracts within and outside Iowa.

701—219.7(423) Prefabricated structures.

219.7(1) *Basic concepts and general rules.* A "prefabricated structure" is any structure assembled in a factory and capable of transport to the location where it will be used in the performance of a construction contract by placement on a foundation either by the buyer or a designated contractor. The term "prefabricated structure" includes a "modular home" as defined in rule 701—231.11(423), a mobile home whether or not sold subject to the issuance of a certificate of title, "manufactured housing" (reference definition in rule 701—33.10(423)), sectionalized housing, precut housing packages, and panelized construction. With a few major exceptions (see subrule 219.7(2) regarding the "60 percent rule" and reference rule 701—33.10(423) regarding the taxation of manufactured housing while it is real property), the sales and use tax treatment of prefabricated structures generally follows the treatment of construction materials, that is, tax is due when those structures are sold to or used by owners,

contractors, subcontractors, or builders. Sales of prefabricated structures which have not been erected on a foundation are considered sales of tangible personal property and thus are taxable at the time of retail sale. The usual basis for computing sales or use tax is the purchase price charged to a consumer or user by the seller of a prefabricated structure. *Custom Built Homes Co. v. Kansas State Commission of Revenue and Taxation,* 184 Kan. 31, 334 P.2d 808 (1959). Sales or use tax is due on the full purchase price when a prefabricated structure is delivered under a contract for sale or sold for use in Iowa. *Dodgen Industries Inc. v. Iowa State Tax Commission,* 160 N.W.2d 289 (Iowa 1968).

219.7(2) *Exceptions to the general rules.* There are a number of exceptions to the general rules stated above in 219.7(1). Those exceptions are applicable to modular and mobile homes and manufactured housing. They are explained as follows:

a. *Modular homes.* Only 60 percent of the sales price from the sale of a modular home is subject to Iowa tax. See rule 701—231.11(423). This 60 percent rule is applicable only to a "modular home" as that phrase is defined in rule 701—231.11(423) and not to other types of prefabricated structures which do not meet the definition of the term "modular home" such as sectionalized housing or panelized construction. Also, the 60 percent rule is not applicable to the sale of materials used in the assembly of a modular home, only to the sale of the finished product.

b. *Mobile homes and manufactured housing.* Iowa use tax and not Iowa sales tax is imposed on mobile homes or manufactured housing sold subject to the issuance of a certificate of title, and, similar to 219.7(2)*"a"* above, use tax is imposed only upon 60 percent of the purchase price of these mobile homes or manufactured housing. Reference rule 701—32.3(423). All mobile homes sold in Iowa or sold outside Iowa for use in this state are sold subject to Iowa use tax, whether sold for placement within or outside a mobile home park; see 2005 Iowa Code chapter 423 and Iowa Code chapter 435.

219.7(3) *Tax consequences of sales of modular homes by various parties, some operating in a dual capacity.*

a. A retailer (dealer) that is not additionally a contractor or manufacturer of modular homes purchases those homes tax-free from a wholesaler or manufacturer for subsequent resale to contractors or owners. Tax must be collected when the dealer sells the modular home to an owner or contractor.

b. A contractor that is not a dealer must pay tax when purchasing a modular home for use in a construction contract or for some other purpose. A contractor's sale of a modular home to an owner or another contractor is treated as explained in Examples 2 and 4 of rule 219.4(423).

c. A dealer that is also a contractor will purchase homes tax-free for inclusion in its inventory. Tax is imposed when the dealer withdraws a home from inventory for sale or use in the performance of a construction contract as explained in rule 219.4(423).

d. A manufacturer that acts as its own dealer and sells its own modular homes at retail to contractors or owners will collect tax on the sales price from its sales of those modular homes to its customers. This situation is in contrast to that described in subrule 219.7(4) in which a manufacturer uses its own modular homes in the performance of construction contracts and the tax due is computed on a sum other than the sales price from the sale of a home.

What is stated in this subrule concerning sales of modular homes is generally applicable to the use tax on mobile homes and manufactured housing. However, one distinct difference is that mobile homes and manufactured housing are seldom, if ever, purchased by a dealer for any subsequent use in the performance of construction contracts. A dealer will often purchase a mobile home or manufactured housing for subsequent resale to a customer as tangible personal property and then will place or install the mobile home or manufactured housing on a site prepared by the customer. This is not the performance of a construction contract (see rule 219.8(423)), and the dealer is a retailer who installs tangible personal property and is not a construction contractor.

219.7(4) *Manufacturers who perform construction contracts.* When companies whose principal business is the manufacture of prefabricated structures use those structures in the performance of construction contracts, this use is treated as a retail sale of the structures on the manufacturer's part. See rule 219.6(423) for a detailed description of the sales tax treatment of this sort of transaction. The 60 percent rule (see 219.7(2) above) is not applicable when calculating the amount of tax owed by a manufacturer.

219.7(5) *Examples.* The following examples are intended to illustrate who must collect or remit sales or use tax when a manufacturer sells a modular home to a contractor or owner or acts as a contractor in erecting the home. The incidence of tax depends on several factors, such as the nature of the manufacturer's business, the point of delivery, the contractual agreement for erection and whether or not a sale for resale has occurred.

EXAMPLE 1. The manufacturer is located outside Iowa. The manufacturer contracts with an Iowa customer to build a home in the manufacturer's factory. The manufacturer also contracts to completely erect the home, install the furnace, and do electrical and other necessary work to make the home ready for occupancy. The main source of the manufacturer's income relates to on-site construction. The manufacturer has paid a sales tax equal to Iowa tax in its state of residency. The manufacturer would be considered to be performing a construction contract in Iowa and would owe use tax in Iowa; however, a sales tax credit would be allowed for tax paid to the other state.

EXAMPLE 2. The manufacturer is located outside Iowa. An Iowa unrelated builder/dealer contracts with the customer for the home and then contracts with the manufacturer for construction, delivery, and installation on the customer's foundation. The manufacturer delivers the home into Iowa on the manufacturer's own truck. The customer, by contractual agreement, is obligated to pay for the home on delivery of the property, so the sale takes place in Iowa. In this situation, the manufacturer is involved in the sale of tangible personal property rather than the sale of real estate and must collect Iowa sales tax on 60 percent of the sales price to the Iowa builder/dealer.

EXAMPLE 3. The manufacturer is located outside Iowa. The manufacturer contracts to sell a home to a customer (owner) in Iowa. The manufacturer hires a common carrier to deliver the home to the Iowa customer. The manufacturer has no activity in Iowa that would create a "nexus" requiring the manufacturer to collect Iowa tax. In this situation, the Iowa customer is required to remit use tax on 60 percent of the purchase price of the home.

EXAMPLE 4. The manufacturer may be located in Iowa or outside Iowa. The manufacturer sells a home to a dealer in Iowa that will resell the home to the final customer. The manufacturer may deliver the home, or delivery may be made by a common carrier. The manufacturer has no contractual obligation for erection. In this situation, the manufacturer is making a sale for resale and is not required to collect tax. The manufacturer must have a valid resale certificate on file from the dealer. The dealer, if in Iowa, would be required to collect tax when the home is sold.

EXAMPLE 5. The manufacturer is located in Iowa. The manufacturer contracts to furnish, deliver, and perform the setup on a home in a state other than Iowa. The manufacturer withdraws the home from inventory and transports the home to the other state for setup. In this situation, the Iowa manufacturer does not owe any Iowa tax because 2005 Iowa Code subsection 423.2(1)*"b"* exempts building materials and supplies that manufacturers withdraw from inventory for construction outside Iowa.

EXAMPLE 6. The manufacturer is located in Iowa. The manufacturer sells a home to an Iowa customer and agrees, under separate contract, to transport the home to the job site and perform the setup. The manufacturer should collect tax on 60 percent of the sales price of the home. The customer also wants a garage. The manufacturer agrees to sell the lumber, nails, and shingles to the customer who would build the garage. This sale would be considered a sale at retail, and the manufacturer should collect tax on the entire sales price of these materials. The same would be true if the manufacturer sold appliances separate from the sale of the home; sales tax would be due on the entire sales price of the appliances.

EXAMPLE 7. The manufacturer may be located inside or outside Iowa. The manufacturer sells a modular home to a dealer that is a general contractor. The dealer subcontracts the work of placing the home on a foundation to various third parties, which transport the home to its site, excavate for and pour the concrete slab, and perform plumbing, electrical hookup, and all other services which are part of the construction contract for placing the modular home at its location. Since the sale of the modular home is to a dealer that is a contractor, the manufacturer will collect and the dealer will pay tax on 60 percent of the modular home's invoice price.

701—219.8(423) Types of construction contracts. The term "construction contract" is defined as an agreement under the terms of which an individual, corporation, partnership or other entity agrees to furnish the necessary building or structural materials, supplies, equipment or fixtures and to erect the same on the project site for a second party known as a sponsor. Nonexclusive examples of the types of construction contracts include: lump-sum contracts; cost plus contracts; time and material contracts; unit price contracts; guaranteed maximum or upset price contracts; construction management contracts; design built contracts; and turnkey contracts.

The following is a nonexclusive list of activities and items which could fall within the meaning of a construction contract or are generally associated with new construction, reconstruction, alteration, or expansion of a building or structure. The list is provided merely for the purpose of illustration. It should not be used to distinguish machinery and equipment from real property or structures since such a determination is factual. See rules 219.11(423) and 219.12(423) for details.

Ash removal equipment (installed as distinguished from portable units)
Automatic sprinkler systems (fire protection)
Awnings and venetian blinds which become attached to real property
Boilers (installed as distinguished from portable units)
Brick work
Builder's hardware
Burglar alarm and fire alarm fixtures
Caulking materials work
Cement work
Central air conditioner installation
Coal handling equipment (installed as distinguished from portable units)
Concrete work
Counters, lockers (installed as distinguished from portable units), and prefabricated cabinets
Drapery installation
Electric conduit work and items relating thereto
Electric distribution lines
Electric transmission lines
Floor covering which is permanently installed—see rule 701—16.48(422,423) for an exception to this regarding carpeting
Flooring work
Furnaces, heating boilers and heating units
Glass and glazing work
Gravel work (excluding landscaping)
Installation of modular homes on foundations
Lathing work
Lead work
Lighting fixtures
Lime work
Lumber and carpenter works
Macadam work
Millwork installation
Mortar work
Oil work
Paint booths and spray booths (installed as distinguished from portable units)
Painting work
Paneling work
Papering work
Passenger and freight elevators
Piping valves and pipe fitting work
Plastering work

Plumbing work
Prefabricated cabinets, counters, and lockers (installed as opposed to portable units)
Putty work
Refrigeration units (central plants installation as distinguished from portable units)
Reinforcing mesh work
Road construction (concrete, bituminous, gravel, etc.)
Roofing work
Sheet metal work
Sign installation (other than portable sign installation)
Steel work
Stone work
Stucco work
Tile work—ceiling, floor and walls
Underground gas mains
Underground sewage disposal
Underground water mains
Vault doors and equipment
Wallboard work
Wall coping work
Wallpaper work
Water heater and softener installation
Weather stripping work
Wire net screen work
Wood preserving work

701—219.9(423) Machinery and equipment sales contracts with installation. Machinery and equipment sales contracts with installation are transactions which are considered a sale of tangible personal property to a final consumer. Therefore, the individual who sells the equipment with installation must purchase the machinery and equipment tax-free as a purchase for resale. This rule should not be confused with subrule 219.3(3) regarding building equipment. The contract should itemize the sales tax separately. If a contractor wishes to avoid an itemization of sales and use tax on machinery and equipment which remains tangible personal property, the contractor can do so by figuring the tax as a general overhead expense and including a statement in the contract and related invoices that "sales tax is included in the contract price."

If the sales transaction is one completed out of state and shipped in interstate commerce to a consumer or a user in Iowa, and not otherwise exempt from tax, the final purchaser is required to pay Iowa use tax on the purchase price of the machinery and equipment.

In a "mixed contract" (a construction contract mingled with a machinery and equipment sales contract), the elements of the contract should be separated for sales tax purposes. See rule 219.10(423).

Certain services which are enumerated in 2005 Iowa Code section 423.2 are subject to tax when performed under a contract for the installation of machinery and equipment which is not done in connection with new construction, reconstruction, alteration, expansion or remodeling of a building or structure. Reference rule 701—15.14(422,423) relating to installation charges. Examples of the enumerated services are: electrical installation; plumbing; welding; and pipe fitting. Other labor charges for job site installation which do not involve a taxable enumerated service are not subject to tax if the charges are separately contracted or, if no written contract exists, are separately itemized on the billing from the seller to the purchaser.

EXAMPLE. Company B contracts with Company A to furnish and install a portable conveyor unit in Company A's new building. Company B can purchase the portable conveyor unit tax-free because the portable conveyor unit maintains its identity as tangible personal property after installation and does not become a component part of the real property. Company B would then charge tax to Company A on the sale of the portable conveyor unit. Installation charges would be part of the total sales price subject

to tax unless they are separately contracted or, if no written contract exists, separately itemized on the billing from Company B to Company A.

701—219.10(423) Construction contracts with equipment sales (mixed contracts). Construction contracts with equipment sales, commonly known as mixed contracts, place a dual burden on the contractor, as a contractor is a consumer of construction materials and also a retailer of the machinery and equipment. As a consumer by statute of construction building materials, supplies, and building equipment, a contractor is required to pay sales tax to the supplier at the time of purchase or remit use tax to the department if purchasing building materials, supplies, and building equipment from an out-of-state supplier. Reference 701—Chapter 30 of the rules regarding use taxes. Machinery and equipment must be purchased for resale by the contractor if the machinery and equipment does not become real property. This means that the contractor does not pay tax to a supplier at the time of purchase of machinery and equipment, but instead, the contractor is responsible for collecting sales tax on the sales price from a sponsor and remitting it to the department.

EXAMPLE. Company A contracts with Company B to have Company B build a new building and install all of the production machinery and equipment for the new building. Company B must pay tax on its purchases of building materials and supplies which lose their identity as tangible personal property and become a component part of the real property. Company B also purchases some refrigeration units for the new building which maintain their identity as tangible personal property. These units must be purchased tax-free by Company B because they will be resold. Company B would then charge Company A the tax on the units which retain their identity as tangible personal property. The installation charges for the units which remain as tangible personal property would be part of the total sales price subject to tax unless they are separately contracted or, if no written contract exists, are separately itemized on the billing from Company B to Company A.

When a mixed construction contract is let for a lump-sum amount, the machinery and equipment furnished and installed shall be considered, for the purposes of this rule only, as being sold by the contractor for an amount equal to the cost of the machinery and equipment.

Persons required to collect sales tax in Iowa under machinery and equipment contracts or a mixed contract are required to have a sales tax or a retailer's use tax permit.

701—219.11(423) Distinguishing machinery and equipment from real property. A construction contract may include many activities, but it does not include a contract for the sale and installation of machinery or equipment. Machinery and equipment includes property that is tangible personal property when it is purchased and remains tangible personal property after installation. Generally, tangible personal property can be moved without causing damage or injury to itself or to the structure, it does not bear the weight of the structure, and it does not in any other manner constitute an integral part of a structure. Manufactured machinery and equipment which does not become permanently annexed to the realty remains tangible personal property after installation.

219.11(1) The following is a list of property which, under normal conditions, remains tangible personal property after installation. The list is nonexclusive and is offered for illustrative purposes only:

a. Furniture, radio and television sets and antennas, washers and dryers, portable lamps, home freezers, portable appliances and window air-conditioning units.

b. Portable items such as casework, tables, counters, cabinets, lockers, athletic and gymnasium equipment and other related easily movable property attached to the structure.

c. Machinery, equipment, tools, appliances, and materials used exclusively as such by manufacturers, industrial processors and others performing a processing function with the items.

d. Office, bank and savings and loan association furniture and equipment, including office machines.

e. Radio, television and cable television station equipment, but not broadcasting towers.

f. Certain equipment used by restaurants and in institutional kitchens; for instance, dishwashers, stainless steel wall cabinets, stainless steel natural gas stoves, stainless steel natural gas convection ovens,

and combination ovens and steamers with stands. This paragraph is not applicable to similar items used in residential kitchens. See Petition of Taylor Industries Inc. (Dkt No. 94-30-6-0367, 3-14-95).

219.11(2) The following is a list of property which, under normal conditions, becomes a part of realty. The list is nonexclusive and is offered for illustrative purposes only:

a. Boilers and furnaces.

b. Built-in household items such as kitchen cabinets, dishwashers, sinks (including faucets), fans, garbage disposals and incinerators.

c. Buildings, and structural and other improvements to buildings, including awnings, canopies, foundations for machinery, floors (including computer room floors), walls, general wiring and lighting facilities, roofs, stairways, stair lifts, sprinkler systems, storm doors and windows, door controls, air curtains, loading platforms, central air-conditioning units, building elevators, sanitation and plumbing systems, decks, and heating, cooling and ventilation systems.

d. Fixed (year-round) wharves and docks.

e. Improvements to land including patios, retaining walls, roads, walks, bridges, fencing, railway switch tracks, ponds, dams, ditches, wells, underground irrigation systems, drainage, storm and sanitary sewers, and water supply lines for drinking water, sanitary purposes and fire protection. Reference rule 701—18.35(422,423) relating to drainage tile.

f. Mobile and modular homes installed on foundations.

g. Planted nursery stock.

h. Residential water heaters, water softeners, intercoms, garage door opening equipment, pneumatic tube systems and music and sound equipment (except portable equipment).

i. Safe deposit boxes, drive-up and walk-up windows, night depository equipment, remote TV auto teller systems, vault doors, and camera security equipment (except portable equipment).

j. Seating in auditoriums and theaters and theater stage lights (except portable seating and lighting).

k. Silos and grain storage bins.

l. Storage tanks constructed on the site.

m. Swimming pools (wholly or partially underground (except portable pools)).

n. Truck platform scale foundations.

o. Walk-in cold storage units that become a component part of a building.

701—219.12(423) Tangible personal property which becomes structures. Items which are manufactured as tangible personal property can, by their nature, become structures. However, the determination is factual and must be made on an item-by-item basis. The following is a listing of criteria which courts have used in making such a determination:

1. The degree of architectural and engineering skills necessary to design and construct the structure.

2. The overall scope of the business and the contractual obligations of the person designing and building the structure.

3. The amount and variety of materials needed to complete the structure, including the identity of materials prior to assembly and the complexity of assembly.

4. The size and weight of the structure.

5. The permanency or degree of annexation of the structure to other real property which would affect its mobility.

6. The cost of building, moving or dismantling the structure.

EXAMPLE. A farm silo, which is a prefabricated glass-lined structure, is intended to be permanently installed. The prefabricated glass-lined structure is 70 feet high and 20 feet around, weighs 30 tons, and is affixed to a concrete foundation weighing 60 tons which is set in the ground specifically for the purpose of supporting the silo. The assembly kit includes 105 steel sheets and 7000 bolts. The silo can be removed without material injury to the realty or to the unit itself at a cost of $7,000. In view of its massive size, the firm and permanent manner in which it is erected on a most substantial foundation, its purpose and function, the expense and size of the task and the difficulty of removing it, the silo is

considered a structure and not machinery or equipment. *Wisconsin Department of Revenue v. A. O. Smith Harvestore,* 240 N.W.2d 357 (Wisc. 1976).

The above criteria are intended only to be a summation of factors which the department will consider in determining whether or not a project involves construction. The following cases are used as reference material: *Wisconsin Department of Revenue v. A. O. Smith Harvestore Products, Inc.,* 240 N.W.2d 357 (Wisc. 1976); *Prairie Tank or Construction Co. v. Department of Revenue,* 364 N.W.2d 963 (Ill. 1977); *Levine v. State Board of Equalization,* 299 P. 2d 738 (Calif. 1956); *State of Alabama v. Air Conditioning Engineers, Inc.,* 174 So 2d 315 (Ala. 1965); *A. S. Schulman Electric Company v. State Board of Equalization,* 122 Cal. Rptr 278 (Calif. 1975); *Western Pipeline Constructors, Inc. v. J. M. Dickinson,* 310 S.W.2d 455 (Tenn.); and *City of Pella Municipal Light Plant,* Order of the Director of Revenue, June 16, 1975.

701—219.13(423) Tax on enumerated services. The tax on the services enumerated in 2005 Iowa Code section 423.2 is basically a tax on labor. When such services are performed on or connected with new construction, reconstruction, alteration, expansion or remodeling of real property or structures, the services are exempt from tax. Neither the repair nor the rental of machinery on the job site is exempt from tax under this rule. See rule 219.21(423) for an explanation of the exemption in favor of rented machinery used by a contractor on a job site.

The distinction between a repair (see subrule 219.13(1)) and new construction, reconstruction, alteration, expansion and remodeling activities (see subrule 219.13(2)) can, oftentimes, be difficult to grasp. Therefore, the intent of the parties and the scope of the project may become the factors which determine whether certain enumerated services are taxable. An area of particular difficulty is the distinction between repair and remodeling. Remodeling a building or other structure means much more than making repairs or minor changes to it. Remodeling is a reforming or reshaping of a structure or some substantial portion of it to the extent that the remodeled structure or portion of the structure is in large part the equivalent of a new structure or part thereof. See *Board of Commissioners of Guadalupe County v. State,* 43 N.M. 409, 94 P.2d 515 (1939) and *City of Mayville v. Rosing,* 19 N.D. 98, 123 N.W. 393 (1909).

219.13(1) Repair is synonymous with mend, restore, maintain, replace and service. A repair contemplates an existing structure or tangible personal property which has become imperfect and constitutes the restoration to a good and sound condition. A repair is not a capital improvement; that is, it does not materially add to the value or substantially prolong the useful life of the property.

2005 Iowa Code section 423.1(42) defines a person engaged in the business of performing taxable services as a retailer. Since retailers may purchase building materials, supplies and equipment for resale, persons making taxable repairs (repairpersons and servicepersons) are not considered to be contractors and are not subject to the provisions of 2005 Iowa Code subsection 423.2(1)*"b."* In addition, such persons are not considered to be owners, subcontractors or builders. Repairpersons and servicepersons will normally purchase building materials and supplies free of tax for subsequent resale to their customers; contractor-retailers will also do this. However, contractors, subcontractors or builders who may make repairs are subject to 2005 Iowa Code subsection 423.2(1)*"b"* and must pay tax at the time building materials, supplies and equipment are purchased from vendors even though the contractors, subcontractors or builders hold a valid sales tax permit. See rules 219.2(423) and 219.3(423). In determining who is a contractor and who is a retailer of repair services, the department looks to the total business of the entity in question and not to any one portion of it. Thus, the fact that a business whose overall activity is contracting has a division engaged in taxable repair services does not transform that business into a retailer providing services rather than a contractor. When contractors do repair work, they may separately itemize labor and materials charges and collect sales tax on all charges. A contractor's markup on a materials charge is part of any taxable sale. A contractor can take a credit for any tax paid on the purchase of materials that are sold as part of a service transaction.

When other persons making repairs sell tangible personal property at retail in connection with any taxable service enumerated in 2005 Iowa Code section 423.2, those persons shall collect and remit tax on the sales price. The person making repairs shall purchase tangible personal property for resale when

the property is used in the repair job and is resold to a customer. Reference rule 701—18.31(422,423) for an explanation of when persons performing services sell the property that the persons use in performing those services to their customers. Nonexclusive examples of repair situations are as follows:

a. Repair of broken or defective glass.

b. Replacement of broken, defective or rotten windows.

c. Replacing individual or damaged roof shingles.

d. Replacing or repairing a segment of worn-out or broken kitchen cabinets.

e. Repair or replacement of broken or damaged garage doors or garage door openers.

f. Replacing or repairing a part of a broken or worn tub, shower, or faucets.

g. Replacing or repairing a broken water heater, furnace or central air conditioning compressor.

h. Restoration of original wiring in a house or building.

219.13(2) The following are examples of new construction, reconstruction, alteration, expansion and remodeling activities:

a. The building of a garage or adding a garage to an existing building would be considered new construction.

b. Adding a redwood deck to an existing structure would be considered new construction.

c. Replacing a complete roof on an existing structure would be considered reconstruction or alteration.

d. Adding a new room to an existing building would be considered new construction.

e. Adding a new room by building interior walls would be considered alteration.

f. Replacing kitchen cabinets with some modification would be considered an improvement.

g. Paneling existing walls would be considered an improvement.

h. Laying a new floor over an existing floor would be considered an improvement.

i. Rebuilding a structure damaged by flood, fire or other uncontrollable disaster or casualty would be considered reconstruction.

j. Building a new wing to an existing building would be considered an expansion.

k. Rearranging the interior physical structure of a building would be considered remodeling.

l. Installing manufactured housing or a modular or mobile home on a foundation would be considered new construction. However, reference rule 701—33.10(423) for a description of the special treatment of taxable installation charges when the taxable sale of manufactured housing as real estate occurs.

m. Replacing an entire water heater, water softener, furnace or central air conditioning unit.

n. Sign installation and well-drilling services are generally performed in connection with new construction.

In all the examples, the contractor is responsible for paying tax to any supplier on materials. However, there would be no tax on any enumerated services.

219.13(3) The term "on or connected with" is broad and should be used to convey generally accepted meaning. Therefore, in a specific situation, the facts relating thereto are controlling in determining whether the exemption is applicable. "On or connected with" does not connote that those things connected have to be primary or subsidiary to the construction, reconstruction, alteration, expansion or remodeling of the real property. An incidental relationship can qualify the activity for exemption if the relationship forms an intimate connection with the construction activity. For example, the service of excavating and grading relating to the clearing of land to begin construction of a building would qualify for the exemption; however, excavating and grading land without motive toward construction would not qualify for exemption even though at some later date plans to construct a building were created and a structure was actually erected.

The presence of a time relationship can also be a factor in determining the applicability of exemption. For example, tax would not apply to separate labor charges relating to the installation of production machinery and equipment in a building while remodeling of the real property was in progress. (Tax could apply to the sales price of the production machinery and equipment; reference rule 701—18.58(422, 423)). However, if a year after all construction activity has ended, the owner decides to install a piece of production machinery in the building, any taxable enumerated services relating thereto would be

subject to tax. Further, if, following construction, the land is graded for the purpose of seeding a new lawn, the exemption would be applicable. However, if the lawn does not grow and the land is regraded the following year, the exemption would not be applicable. Reference 701—subrule 18.58(8) for the exemption regarding the installation of new industrial machinery and equipment.

Therefore, the motive behind the activity and the course of events that could reasonably be expected to occur would be a further consideration in determining if the exemption is applicable.

A physical relationship is also a factor that should be evaluated. If a building is constructed to house machinery, any enumerated services relating to the installation of that machinery would be exempt from tax. For example, piping joining two pieces of equipment housed in separate buildings would qualify for exemption if the equipment in either building was installed while such new construction, reconstruction, alteration, expansion or remodeling to the structure was also taking place to house the equipment.

On the other hand, an incidental relationship, a time relationship and close physical proximity may not be enough to support the conclusion that a taxable service is performed in connection with new construction or reconstruction. For example, a homeowner hires a general contractor to add a new room to an existing home (which is new construction; see 219.13(2)*"d"*). The existing home is in need of a number of the repairs described in 219.13(1); for example, it is in need of rewiring and replacement of a broken window. The general contractor rewires the home and repairs the window in addition to building the new room. The taxable services which the general contractor performs while rewiring the home and repairing the window are not performed in connection with the construction of the new room simply because those services happen to be performed at the same time and on the same home as the new construction. If the addition of the new room were the cause of the need for the taxable service (e.g., the window was broken during construction of the new room) and not just a convenient occasion for performance of the service, that performance would be exempt from tax.

The department would like to emphasize that facts and motives are important in the determination of the taxability of services relating to construction activities. However, it should also be noted that taxes on enumerated services are applicable to repair or installation work that is not a construction activity. Refer to subrule 219.13(1) relating to persons who make repairs or perform enumerated services for more information.

219.13(4) Excavating includes digging, hollowing out, scooping out, or making a hole in the earth. It also includes removal of materials or substance found beneath the surface. Grading includes a change in the earth's structure by scraping and filling to a common level or a fixed line known as a grade. The enumerated services of excavating and grading are not subject to tax if performed on or connected with new construction. Removal of overburden which is directly related to road building, building of dikes, building of farm ponds, and creating drainage ditches would not be taxable as such activities would be considered on or connected with the creation of a structure. See *Maasdam v. Kirkpatrick,* 214 Iowa 1388 (1932). However, the mere removal of overburden, without more, would be taxable as the enumerated service of excavating or grading under 2005 Iowa Code subsection 423.2(6).

219.13(5) Services associated with new construction or reconstruction, for example, which are not taxable include, but are not limited to, brick laying, concrete finishing, tiling, siding installation, laying of linoleum and other flooring and carpet installation. No tax can be collected on the performance of these services even when they are furnished in connection with the performance of repairs.

701—219.14(423) Transportation cost. Transportation charges and delivery charges are not subject to the Iowa sales and use tax when they are separately contracted or, if no written contract exists, are separately itemized on the billing from the seller to the purchaser. Reference rule 701—15.13(422, 423).

701—219.15(423) Start-up charges. Start-up charges are not subject to the Iowa sales and use tax when they are separately contracted or, if no written contract exists, are separately itemized on the billing from the seller to the purchaser.

701—219.16(423) Liability of subcontractors. A subcontractor who is providing materials and labor on the actual construction of the building or structure has the same status and tax responsibilities as a

general contractor under the Iowa statutes. However, where an individual or firm is hired to provide machinery and equipment to a general contractor or another subcontractor, the individual or firm is considered a material supplier rather than a subcontractor. This is true even though the machinery and equipment are supplied with installation. Items of machinery and equipment sold by material suppliers to contractors shall be sold for resale and the contractor must provide the material supplier with a valid resale certificate.

701—219.17(423) Liability of sponsors. The sponsor cannot be held responsible for a tax liability incurred on building materials, supplies and equipment by a general contractor or subcontractor in the completion of a construction contract. Likewise, a general contractor cannot be held responsible for the tax liability incurred on building materials, supplies and equipment by a subcontractor in the completion of a construction contract. The tax responsibility regarding machinery and equipment contracts depends on where the sale was consummated. If the sale was consummated in Iowa, the seller is responsible for the collection and remittance of tax unless a valid exemption certificate is given by the purchaser. If the sale was consummated outside Iowa and the seller does not remit use tax to the department, then a use tax would be due from the Iowa user.

701—219.18(423) Withholding. A sponsor of a contract with a nonregistered out-of-state (nonresident) contractor may be asked to withhold the final payment of the contract as a guarantee that sales and use taxes will be paid. The withholding requirement may also apply to registered out-of-state contractors at the discretion of the department. The department will issue a notice to the sponsor to support the withholding of funds. In order to seek a release of the notice, the out-of-state contractor is required to file a report with the department consisting of the following departmental forms:

1. Form 35-012, which is a listing of subcontractors to whom the out-of-state contractor has awarded a construction contract. This statement should be submitted on each project as it becomes available.
2. Form 35-013, which is a list of material suppliers both in state and out of state from whom tangible personal property has been purchased for use in completing each project or contract.
3. Form 35-001, which is a summary of the provisions of the actual contract.

All letters of release furnished by the department are subject to audit and, therefore, are not unconditional release from any Iowa sales or use tax liability. All letters of release will be issued within 60 days upon receipt of the proper information unless an error or discrepancy is noted.

701—219.19(423) Resale certificates. Whenever machinery and equipment which will remain tangible personal property after installation is purchased for a machinery and equipment contract by a contractor from a supplier or a material supplier, it should be purchased for resale. See rule 219.9(423). Resale purchases are most commonly related to machinery and equipment sales contracts with installation and mixed construction contracts. Contractor-retailers and persons making repairs may also purchase materials for resale as long as they collect tax on their retail sales and pay the tax themselves on items withdrawn from inventory for use in the performance of a construction contract. See rule 219.4(423) and subrule 219.13(1). Resale certificates can be obtained by contacting the Iowa department of revenue. Reference rule 701—15.3(422,423) for detailed information on resale certificates.

701—219.20(423) Reporting for use tax. An Iowa contractor can report use tax either on a consumer's use tax return or as consumed goods on a sales tax return. Tax is due in the quarter the materials are delivered into Iowa. Nonresident contractors should report use tax on a consumer's use tax return. Consumer's use tax returns for nonresident contractors must be obtained directly from the department of revenue unless the contractor is registered with the department.

701—219.21(423) Exempt sale, lease, or rental of equipment used by contractors, subcontractors, or builders.

219.21(1) *Exempt lease or rental of machinery and equipment.* On and after July 1, 2004, the sales price on the lease or rental only of the following types of machinery and equipment is exempt

from tax: all machinery, equipment, and replacement parts directly and primarily used by contractors, subcontractors, and builders for new construction, reconstruction, alterations, expansion, or remodeling of real property or structures and all machinery, equipment, and replacement parts which improve the performance, safety, operation, or efficiency of the equipment and replacement parts so used. A contractor's, subcontractor's, or builder's purchases of this equipment would continue to be taxable, as would a lessor's purchases of machinery, equipment, or replacement parts for subsequent exempt rental to a contractor, subcontractor, or builder. Reference rule 701—26.18(422,423) for an extensive explanation of this matter.

219.21(2) *Exempt sales, including lease or rental of equipment.* Beginning July 1, 2005, the sales price on the sale in any form, including lease or rental, of the following types of equipment is exempt from the tax imposed by Iowa Code chapter 423: self-propelled building equipment, self-constructed cranes, pile drivers, structural concrete forms, regular and motorized scaffolding, generators, or attachments customarily drawn or attached to those items of equipment, 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. The sales price from a sale in a form other than that of a lease or rental is not exempt from all excise tax. See 701—Chapter 241, division II, for an explanation of the new excise tax imposed on these transactions as of July 1, 2005.

These rules are intended to implement 2005 Iowa Code subsections 423.1(42), 423.2(1)*"b"* and *"c,"* 423.2(6), 423.3(64), and 423.5(2) and 2005 Iowa Code Supplement subsections 423.3(37) and 423.3(85).

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CHAPTERS 220 to 224
Reserved

CHAPTER 225
RESALE AND PROCESSING EXEMPTIONS PRIMARILY OF BENEFIT TO RETAILERS

Rules in this chapter include cross references to provisions in 701—Chapters 15, 17, 18 and 26 that were applicable prior to July 1, 2004.

701—225.1(423) Paper or plastic plates, cups, and dishes, paper napkins, wooden or plastic spoons and forks, and straws. When paper or plastic cups, plates, and dishes, paper napkins, and wooden or plastic spoons, forks, and other utensils are sold with food or other items to a buyer, and the buyer uses or consumes the utensils, sales of those utensils to retailers shall be considered sales for resale. The sales price from the sale of such items by retailers to consumers or users shall be subject to tax.

When these articles are transferred in connection with a service or sold for free distribution by retailers apart from a retail sale, the transaction shall be deemed to be a retail sale to the retailer and shall be taxable.

Sales of reusable placemats to retailers that sell meals shall be subject to tax.

EXAMPLE 1. A retailer purchases napkins and disposable forks and knives for the retailer's restaurant. The retailer provides these items free of charge, apart from the retail sale of food at the retailer's restaurant. Sale of these items to the retailer is a retail sale and is subject to tax.

EXAMPLE 2. A retailer purchases napkins and disposable forks and knives for the retailer's restaurant. The retailer sells these items with tangible personal property to the retailer's customers. The sale of these items to the retailer is considered a sale for resale and is not subject to Iowa sales tax at the time of purchase.

This rule is intended to implement Iowa Code section 423.3(2).

701—225.2(423) A service purchased for resale. A service is purchased for resale when it is subcontracted by the person who is contracted to perform the service.

225.2(1) *Services purchased for resale are purchased exempt from tax.*

EXAMPLE 1. X is a printer and enters into a contract with Y to print 500 bulletins. X subcontracts the job to Z. Z prints the 500 bulletins for X. There is no tax on the contracts between X and Z since X is purchasing the printing service from Z for resale to Y.

EXAMPLE 2. B owns a used car lot. E purchases an automobile from B. As a condition of such sale, B agrees to make repairs to the automobile. However, B subcontracts such repair work to C. E has agreed to pay B for the repair services and for the sale price of the automobile. Under these circumstances, the repair services furnished by C to B constitute a sale of such services to B for resale to E, who is the consumer of these services.

EXAMPLE 3. B owns an auto repair shop and C brings an automobile in to have the air conditioner fixed. B is unable to fix the air conditioner so the auto is sent to G, who is an air-conditioning specialist. The sale of G's service to B is a sale for resale by B to C.

225.2(2) *Services not purchased for resale.* The tax on services must be collected at the time the service is complete even if the service is not purchased by the ultimate beneficiary.

EXAMPLE. A operates a test laboratory business. A agrees to provide testing services to B. In the course of conducting the tests, A rents equipment from C. In computing the fee which B has agreed to pay A for testing services, A will include A's costs, including the rental A paid to C in rendering the testing services. Under these circumstances, A furnished B with testing services, and not with the equipment rental services which C furnished to A. A is the consumer of the equipment rental services which are not resold to B, and B is the consumer of the testing services.

This rule is intended to implement Iowa Code section 423.3(2).

701—225.3(423) Services used in the repair or reconditioning of certain tangible personal property. Services are exempt from tax when used in the reconditioning or repairing of tangible

personal property of the type which is normally sold in the regular course of the retailer's business and which is held for sale by the retailer.

EXAMPLE 1. A owns a retail appliance store and contracts with B to repair a refrigerator that A is going to resell. A can purchase the repair service from B tax-free because A is regularly engaged in selling refrigerators and will offer the refrigerator for sale when it is repaired.

EXAMPLE 2. B, a used car dealer, owns a used car lot and contracts with C to repair a used car that B is going to sell. B can purchase the repair service from C tax-free because B is regularly engaged in selling used cars and will sell the used car after it is repaired.

EXAMPLE 3. C operates a retail farm implement dealership. C accepts a motorboat as part consideration for a piece of farm equipment. C then contracts with D to repair the motor on the boat. C does not normally sell motorboats in the regular course of C's business. Therefore, the service performed by D for C is subject to tax.

EXAMPLE 4. XYZ owns a retail radio and television store in Iowa and contracts with W to repair a television that XYZ is going to sell. XYZ can purchase television repair service tax-free from W because XYZ is regularly engaged in selling televisions subject to sales tax. However, in this instance XYZ sells the used television and delivers it into interstate commerce with the result that the Iowa sales tax is not collectible. Regardless of this fact, the exemption is applicable, and no Iowa tax is due for the television repair services performed.

This rule is intended to implement Iowa Code sections 423.1(50) and 423.1(51).

701—225.4(423) Tangible personal property purchased by a person engaged in the performance of a service.

225.4(1) *In general.*

a. Tangible personal property purchased by a person engaged in the performance of a service is purchased for resale and not subject to tax if (1) the provider and user of the service intend that a sale of the property will occur, and (2) the property is transferred to the user of the service in connection with the performance of the service in a form or quantity capable of a fixed or definite price value, and (3) the sale is evidenced by a separate charge for the identifiable piece or quantity of property.

b. Tangible personal property which is not sold in the manner set forth in *"a"* above is not purchased for resale and thus is subject to tax at the time of purchase by a person engaged in the performance of a service. Such tangible personal property is considered to be consumed by the purchaser who is engaged in the performance of a service, and the person performing the service shall pay tax upon the sale at the time of purchase.

EXAMPLE 1. An investment counselor purchases envelopes. These envelopes are used to send out monthly reports to the investment counselor's clients regarding their accounts. Tax is due at the time the investment counselor purchases the envelopes if the clients are not billed for these items. Each envelope is transferred to a client in a form or quantity which is capable of a fixed or definite price value. However, there must also be an actual sale to the client (customer) of an item of personal property in order that there be a "resale" of the item.

EXAMPLE 2. An automobile repair shop purchases solvents which are used in cleaning automobile parts and thus in performing its automobile repair service. Tax is due at the time the automobile repair shop purchases the solvents since the solvents are not sold to the customer and, in this case, the items are not transferred to a customer in a form or quantity which is capable of a fixed or definite price value. Thus, the solvents are deemed consumed by the purchaser engaged in the performance of the service.

EXAMPLE 3. A retailer purchases television picture tubes tax-free and makes a separate charge for the picture tube to the customer. Since the tube is transferred to the customer in a form or quantity capable of a fixed or definite price value, the retailer may purchase the picture tube exempt from tax for subsequent resale.

EXAMPLE 4. A beauty shop or barber shop purchases shampoo and other items to be used in the performance of its service. Tax is due at the time the beauty shop or barber shop purchases such items from its supplier because the customers of the beauty shop or barber shop are not separately billed for

the items and because the items are not transferred to the customer in a form or quantity capable of a fixed or definite price value. The items are consumed by the beauty shop or barber shop.

EXAMPLE 5. A car wash purchases water, electricity, or gas used in the washing of a car. The car wash would be the consumer of the water, electricity, or gas, and tax is due at the time of purchase. The items purchased by the car wash are not transferred to the customer in a form or quantity capable of a fixed or definite price value, and the customer is not billed for the items.

EXAMPLE 6. An accounting firm purchases plastic binders which are used to cover the reports issued to its customers. These binders would be subject to tax at the time of purchase by the firm where the customer of the firm is not billed for the item, because there is no sale to the customer.

EXAMPLE 7. A meat locker purchases materials such as wrapping paper and tape which it uses to wrap meat for customers who provide the locker with the meat. These materials would be subject to tax at the time of purchase by the meat locker because they are not sold to the customer in a form or quantity capable of a fixed or definite price value.

EXAMPLE 8. A jeweler purchases materials such as main springs and crystals to be used in the performance of a service. These items are purchased by the jeweler for resale when they are transferred to the customer in a form or quantity capable of a fixed or definite price value, and each item is actually sold to the customer as evidenced by a separate charge therefor.

EXAMPLE 9. A lawn care service applies fertilizer, herbicides, and pesticides to its customers' lawns. The following are examples of invoices to customers which are suitable to indicate a lawn care service's purchase of the fertilizer, herbicides, and pesticides for resale to those customers: "Chemicals...31 Gal....$60"; "Fertilizer...50 lbs....$100"; and "Materials applied to lawn...4 bushel...$40". The following are examples of information placed upon an invoice which would not indicate a purchase for resale to the customers invoiced: "Fifty percent of the charge for this service is for materials placed on a lawn," or "Lawn chemicals...$30" or "Fifty pounds of fertilizer was applied to this lawn."

225.4(2) *Purchases made by automobile body shops or garages with body shops.* Tangible personal property purchased by body shops can be purchased for resale provided both of the following conditions are met:

a. The property purchased for resale is actually transferred to the body shop's customer by becoming an ingredient or component part of the repair work. See Iowa Code section 423.3(2).

b. The property purchased for resale is itemized as a separate item on the invoice to the body shop's customer and is transferred to the customer in a form or quantity capable of a fixed or definite price value.

If either of the above two conditions is not met, there is no purchase for resale and the body shop is deemed the consumer of the item purchased.

When body shops purchase items which will be resold (see list of items in this rule) in the course of the repair activity, the vendors selling to the body shops are encouraged to accept a valid resale certificate at the time of purchase. Reference rule 701—15.3(422,423). Failure of the vendor to accept a valid resale certificate may subject that vendor to sales tax liability since the burden of proof would be on the vendor that a sale was made for resale. If the vendor cannot meet that burden, the vendor will be liable for the sales tax. Such burden is not met merely by a showing that the purchaser had obtained from the department an Iowa retail sales tax permit or retail use tax permit.

For insurance purposes, body shops are reimbursed by insurance companies for "materials" which such shops consume in rendering repair services. Some of the materials are transferred to the recipients of the repair services and some are not. Of those so transferred, such transfer is in irregular quantities and is not in a form or quantity capable of a fixed or definite price value. Therefore, body shops are generally deemed to be the consumers of materials and must pay tax on these items at the time of purchase. Nonexclusive examples of items most likely to be included in this category of "materials," whether actually transferred to customers of body shops or not, are as follows:

Abrasives
Battery water
Body filler or putty
Body lead

Bolts, nuts and washers
Brake fluid
Buffing pads
Chamois
Cleaning compounds
Degreasing compounds
Floor dry
Hydraulic jack oil
Lubricants
Masking tape
Paint
Polishes
Rags
Rivets and cotter pins
Sanding discs
Sandpaper
Scuff pads
Sealer and primer
Sheet metal
Solder
Solvents
Spark plug sand
Striping tape
Thinner
Upholstery tacks
Waxes
White sidewall cleaner

The following are nonexclusive examples of parts which can be purchased for resale since they are generally transferred to the body shop's customer during the course of the repair in a form or quantity capable of a fixed or definite price value and are generally itemized separately as parts.

Accessories
Batteries
Brackets
Bulbs
Bumpers
Cab corners
Chassis parts
Door guards
Door handles
Doors
Engine parts
Fenders
Floor mats
Grilles
Headlamps
Hoods
Hubcaps
Radiators
Rocker panels
Shock absorbers
Side molding
Spark plugs

Tires
Trim
Trunk lids
Wheels
Window glass
Windshield ribbon
Windshields

The following are nonexclusive examples of tools and supplies which are generally not transferred to the body shop's customer during the course of the repair and, therefore, could not be purchased for resale. The body shop is deemed the consumer of these items since they are not transferred to a customer. Therefore, the body shop must pay tax to the vendor at the time of purchase.

Air compressors and parts
Body frame straightening equipment
Brooms and mops
Buffers
Chisels
Drill bits
Drop cords
Equipment parts
Fire extinguisher fluids
Floor jacks
Hand soap
Hand tools
Office supplies
Paint brushes
Paint sprayers
Sanders
Signs
Spreaders for putty
Washing equipment and parts
Welding equipment and parts

Because of the nature of the body shop business and the formulas devised by the insurance industry to reimburse body shops for cost of "materials," it is possible for body shops, in their invoices to their customers, to separately set forth labor, resold parts, and materials. While the materials can be separately invoiced as one general item, there is no way to ascertain a definite and fixed price for each item of the materials listed in this rule and consumed by the body shops, and some of such individual materials are not even transferred by body shops to their customers. Therefore, the body shops are generally the "consumers" of "materials" and do not purchase them for resale. See *W. J. Sandberg Co. v. Iowa State Board of Assessments and Review*, 225 Iowa 103, 278 N.W. 643 (1938). Thus, body shops should pay tax to their suppliers on all materials purchased and consumed by body shops. If materials are purchased from non-Iowa suppliers that do not collect Iowa tax from body shops, such body shops should remit consumer use tax to the department of revenue on such materials.

Body shops must collect sales tax on the taxable service of repairing motor vehicles. See rule 701—221.62(423). However, due to the nature of the insurance formulas, it is possible for body shops to itemize that portion of their billing which would be for repair services and that portion relating to consumed "materials." It is also possible for body shops to itemize that portion of their charges for parts which they purchase for resale to their customers. Body shops do not and cannot resell the tools and supplies previously listed in this rule; their purchases of such items are taxable.

Therefore, as long as body shops separately itemize on their invoices to their customers the amounts for labor, parts, and for "materials," body shops should collect sales tax on the labor and the parts, but not on the materials as enumerated in this rule.

EXAMPLE. A body shop repairs a motor vehicle by replacing a fender and painting the vehicle. In doing the repair work, the body shop uses rags, sealer and primer, paint, solder, thinner, bolts, nuts and washers, masking tape, sandpaper, waxes, buffing pads, chamois, and polishes. In its invoice to the customer, the labor is separately listed at $600, the part (fender) is separately listed at $600, and the category of "materials" is separately listed for a lump sum of $200, for a total billing of $1,400. The Iowa sales tax computed by the body shop should be on $1,200, which is the amount attributable to the labor and the parts. The materials consumed by the body shop were separately listed and would not be included in the tax base for the taxable "sales price," as defined in Iowa Code section 423.1(47), which is taxable under Iowa Code section 423.2.

In this example, if the "materials" were not separately listed on the invoice, but had been included in either or both of the labor or parts charges by marking up such charges, the body shop would have to collect sales tax on the full charges for parts or labor even though tax was paid on materials by the body shop to its supplier at the time of purchase.

This rule is intended to implement Iowa Code sections 423.1(35) and 423.3(2).

701—225.5(423) Maintenance or repair of fabric or clothing. Sales of chemicals, solvents, sorbents, or reagents directly used and consumed in the maintenance or repair of fabric or clothing are exempt from tax. See 701—Chapter 211 for definitions of the terms "chemical," "solvent," "sorbent," and "reagent." This rule's exemption is mainly applicable to dry-cleaning and laundry establishments; however, it is also applicable to soap or any chemical or solvent used to clean carpeting. The department presumes that a substance is "directly used" in the maintenance or repair of fabric or clothing if the substance comes in contact with the fabric or clothing during the maintenance or repair process. Substances which do not come into direct contact with fabric or clothing may, under appropriate circumstances, be directly used in the maintenance or repair of the fabric or clothing, but direct use will not be presumed.

The following are examples of substances directly used and consumed in the maintenance or repair of fabric or clothing: perchloroethlyene (also known as "perch") or petroleum solvents used in dry-cleaning machines and coming in direct contact with the clothing being dry-cleaned. Substances used to clean or filter the "perch" or petroleum solvents would also be exempt from tax, even though these substances do not come in direct contact with the clothing being cleaned. The sale of soap or detergents especially made for mixing with "perch" or petroleum solvents is exempt from tax. The sale of stain removers to dry cleaners is exempt from tax.

A commercial laundry's purchase of detergents, bleaches, and fabric softeners is exempt from tax. A commercial laundry's purchase of water, which is a solvent, is also exempt from tax if purchased for use in the cleaning of clothing.

The purchase of starch by laundries and "sizing" by dry cleaners is not exempt from tax.

This rule is intended to implement Iowa Code section 423.3(50).

701—225.6(423) The sales price from the leasing of all tangible personal property subject to tax. See 701—Chapter 211 for the definitions of the words "lease or rental" and "tangible personal property" which are applicable to this rule.

225.6(1) *Past and present taxation of leases.* Prior to July 1, 2004, the rental of tangible personal property was treated as a taxable service for the purposes of Iowa sales and use tax law; reference 2003 Iowa Code section 422.43(11) and 701—subrule 26.18(2). The "rental" of tangible personal property was not a "sale" of that property, and therefore a purchase for subsequent leasing or rental was not a purchase for resale. See *Cedar Valley Leasing, Inc. v. Iowa Department of Revenue*, 274 N.W.2d 357 (Iowa 1979).

On and after July 1, 2004, the rental of tangible personal property is treated as the sale of that property for the purposes of Iowa sales and use tax law because "leases" and "rentals" of tangible personal property are taxable retail "sales" of that property. The rental of tangible personal property is no longer listed as a taxable enumerated service. The resale exemption in favor of sales for resale of tangible personal property is now applicable to sales and leases of tangible personal property for subsequent rental or lease.

EXAMPLE A. Al's Rent All buys blowers, hand tools, ladders, plumbers' snakes, sanders, and tillers for subsequent short-term rental to various customers. Al's purchases of these items of equipment are purchases for resale and are exempt from tax as of July 1, 2004.

EXAMPLE B. In addition to its purchases of equipment for subsequent rental, Al's Rent All leases from its suppliers, long-term, items of heavier equipment such as backhoes, forklifts, manlifts, tractors, and trenchers, again for subsequent leasing to various customers. Since the leasing of tangible personal property is now a purchase of that property, Al's leasing for later sublease is a purchase of tangible personal property and is exempt from tax at the time of purchase as the purchase of tangible personal property for subsequent resale.

225.6(2) *Distinguishing leases and rentals of tangible personal property from the furnishing of nontaxable services.* In order to determine whether a particular fee is charged for the rental of tangible personal property or for the furnishing of a nontaxable service, the department looks at the substance, rather than the form, of the transaction. When the possession and use of tangible personal property by the recipient is merely incidental as compared to the nontaxable service performed, all of the sales price is derived from the furnishing of such nontaxable service and, unless a separate fee or charge is made for the possession and use of tangible personal property, no sales price is derived from the rental of tangible personal property. When the nontaxable service is merely incidental to the possession and use of the tangible personal property by the recipient, all of the sales price is derived from the furnishing of tangible personal property rental and, unless a separate fee or charge is made for the nontaxable service, no sales price is derived from the nontaxable service. When a tangible personal property rental agreement contains separate fee schedules for rent and for nontaxable service, only the sales price derived from the tangible personal property rental is subject to tax. This rule is not to be so construed as to be at variance with Iowa Code sections 423.2(8) and 423.3(70) concerning bundled service contracts and transportation services respectively.

225.6(3) *Rental of real property distinguished from rental of tangible personal property.* If a rental contract allows the renter exclusive possession or use of a defined area of real property and, incident to that contract, tangible personal property is provided which allows the renter to utilize the real property, if there is no separate charge for rental of tangible personal property, the sales price is for the rental of real property and is not subject to tax, unless taxable room rental is involved; reference rule 701—18.40(422,423).

If a person rents tangible personal property and, incidental to the rental of the property, space is provided for the property's use, the sales price from the rental shall be subject to tax. It may at times be difficult to determine whether a particular transaction involves the rental of real property with an incidental use of tangible personal property or the rental of tangible personal property with an incidental use of real property.

225.6(4) *Rental of tangible personal property and rental of fixtures.* The rental of tangible personal property which shall, prior to its use by the renter under the rental contract, become a fixture shall not be subject to tax. Such a rental is the rental of real property rather than tangible personal property. In general, any tangible personal property which is connected to real property in a way that it cannot be removed without damage to itself or to the real property is a fixture. See *Equitable Life Assurance Society of the United States v. Chapman*, 282 N.W. 355 (Iowa 1983) and *Marty v. Champlin Refining Co.*, 36 N.W.2d 360 (Iowa 1949). The rental of a mobile home or manufactured housing, not sufficiently attached to realty to constitute a fixture, is room rental rather than tangible personal property rental and subject to tax on that basis; see *Broadway Mobile Home Sales Corp. v. State Tax Commission*, 413 N.Y.S.2d 231 (N.Y. 1979). Reference also rule 701—18.40(422,423).

225.6(5) *Rental of tangible personal property embodying intangible personal property rights—transactions taxable and exempt.* Under the law, the sales price from rental of tangible personal property includes royalties and copyright and license fees. The rental of all property which is a tangible medium of expression for the intangible rights of royalties and copyright and license fees is subject to tax. Thus the sales price from the rental of films, videodiscs, videocassettes, and any computer software (other than rental of custom programs, reference 701—paragraph 18.34(3)*"a"*) which is the tangible means of expression of intangible property rights is subject to tax. The rental of such tangible property

shall be subject to tax whether the property is held for rental to the general public or for rental to one or a few persons. See *Boswell v. Paramount Television Sales, Inc.*, 282 So.2d 892 (Ala. 1973). Reference also rule 701—17.18(422,423) regarding the exemption from the requirements of this subrule for rental of films, videotapes and other media to lessees imposing a taxable charge for viewing or rental of the media or to lessees that broadcast the contents of these media for public viewing or listening.

225.6(6) *Deposits and additional fees.* Taxability of a deposit required by an owner of rental property as a condition of the rental depends upon the type of deposit required. A deposit subject to forfeiture for the lessee's failure to comply with the rental agreement is not subject to tax. This type of deposit is separate from the rental payments and therefore is not taxable as part of the rental. Such deposits may include those for reservation, late return of the rental property or damage to the rental property. Deposits not subject to forfeiture which represent part of the rental receipts are considered part of the taxable rental and are subject to tax. Such deposits may include a deposit of the first rental payment which is applied to the rental receipts.

When tangible personal property is rented for a flat fee per month, per year, or for other designated periods, plus an additional fee based on quantity and capacity of production or use, the entire charge is taxable.

225.6(7) *Leasing of tangible personal property moving in interstate commerce.*

a. On and after July 1, 2004, in the case of a lease or rental that requires recurring periodic payments, the first periodic payment is taxed to Iowa if the property was delivered to the lessee in Iowa. Periodic payments made subsequent to the first payment may be taxed only by the state in which the property is primarily located for the 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. Where a nonresident lessor leases tangible personal property to a resident or nonresident lessee and the lessee uses the property in Iowa, the nonresident lessor has the responsibility of collecting Iowa use tax on the lease payments if Iowa is the primary location of the property, provided the lessor maintains a place of business in Iowa as described in 2005 Iowa Code sections 423.1(43) and 423.14(2). Whether the lease agreement is executed in Iowa or not is irrelevant. *State Tax Commission v. General Trading Co.*, 322 U.S. 335, 64 S.Ct. 1028,88 L.Ed 1309 (1944).

c. Where a lessee is the recipient of equipment rental services sourced to Iowa and no tax has been collected from such lessee by the lessor, the lessee should remit Iowa use tax to the department of revenue. In the event no tax is remitted, the department, in its discretion, may seek to collect the tax from the lessor or lessee. In the event that the lessee rents tangible personal property, and the lessor does not maintain a place of business in Iowa and does not collect use tax pursuant to 2005 Iowa Code section 423.14, such lessee shall remit tax on its rental payments to the department.

d. Where a resident lessor leases equipment to a nonresident lessee outside Iowa and the equipment is delivered to the lessee outside Iowa, the act of leasing is exempt from the Iowa sales tax on the rental payments. However, in the event the lessee brings the equipment into Iowa, uses it in Iowa, and Iowa becomes the primary location of the property, Iowa use tax applies to subsequent rental payments.

e. If a sales or use tax has already been paid to another state on the sales price of tangible personal property prior to the use of that property in Iowa, a tax credit against the Iowa use tax on the purchase price will be given. After the equipment is brought into Iowa, if a sales or use tax is properly payable and is paid to another state on the rental payments of equipment, for the same time the Iowa tax is imposed on such rentals, a tax credit against the Iowa use tax on such rental payments will be given.

This rule is intended to implement Iowa Code sections 423.1(22), 423.1(43), 423.1(45), 423.1(54), 423.2(1), and 423.15(2).

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CHAPTERS 226 to 229
Reserved

CHAPTER 230
EXEMPTIONS PRIMARILY BENEFITING MANUFACTURERS AND OTHER PERSONS ENGAGED IN PROCESSING

Rules in this chapter include cross references to provisions in 701—Chapters 15, 18 and 26 that were applicable prior to July 1, 2004.

701—230.1 Reserved.

701—230.2(423) Carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and taxable services used in processing. An expanded definition of "processing" is allowed to manufacturers of food products for human consumption using carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and taxable services. For the purposes of this rule, the rental or leasing of tangible personal property is treated as the furnishing of a taxable service and not as the sale of tangible personal property.

230.2(1) "Manufacturer" characterized. A manufacturer is a person or entity different from a merchant, dealer, or retailer. See *Commonwealth v. Thackara Mfg. Co.*, 27 A. 13 (Pa. 1893). In order for a business to be a manufacturer, the principal business of that business must be manufacturing. See *Associated General Contractors v. State Tax Commission*, 123 N.W.2d 922 (Iowa 1963). Another distinction is that a merchant or retailer sells in order to earn a profit and a manufacturer sells to take profits already earned from prior activity. See *State v. Coastal Petrol Inc.*, 198 So. 610 (Ala. 1940). A person primarily engaged in selling tangible personal property in order to earn a profit and only incidentally engaged in creating products suitable for use from raw materials is not a manufacturer. A retail grocery store, incidentally and not primarily engaged in manufacturing activities such as meat cutting or production and packaging of baked goods, is not a "manufacturer of food products for human consumption" and is not entitled to claim the special processing exemption allowed to those manufacturers. Retail food stores, restaurants, and other persons incidentally engaged in food manufacturing activities can, however, continue to claim on their incidental processing activities the processing exemption allowed to persons who are not manufacturers of food products for human consumption. See rule 701—230.3(423).

230.2(2) The following activities constitute processing when performed by a manufacturer to create food products for human consumption. Any carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, or other taxable services primarily used in the performance of these activities is exempt from tax.

a. Treatment of material that changes its form, context, or condition in order to produce a marketable food product for human consumption. "Special treatment" of the material to change its form, context, or condition is not necessary to lawfully claim the exemption. Examples of "treatment" which would not be "special" are the following: the washing, sorting and grading of fruits or vegetables; the washing, sorting, and grading of eggs; and the mixing or agitation of liquids. By way of contrast, sterilization would be "special treatment."

b. Maintenance of the quality or integrity of the food product and the maintenance or the changing of temperature levels necessary to avoid spoilage or to hold the food in marketable condition. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or other taxable service used in freezers, heaters, coolers, refrigerators, or evaporators used in cooling or heating which holds the food product at a temperature necessary to maintain quality or integrity or to avoid spoilage of the food or to hold the food product in marketable condition is exempt from tax. It is not necessary that the taxable service be used to raise or lower the temperature of the food. Also, processing of food products for human consumption does not cease when the food product is in marketable form. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or taxable service used to maintain or to change a temperature necessary to keep the product marketable is exempt from tax.

c. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or other taxable service primarily used in the maintenance of environmental conditions necessary for the safe or efficient use of machinery or material used to produce the food product is exempt from tax. For example, electricity used to air-condition a room in which meat is stored is exempt from tax if the purpose of the air conditioning is

to maintain the meat in a condition in which it is easy to slice rather than for the comfort of the employees who work in the room.

d. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or taxable service primarily used in sanitation and quality control activities is exempt from tax. Nonexclusive examples exempt from tax include taxable services used in pH meters, microbiology counters and incubators used to test the purity or sanitary nature of a food product. For example, electricity used in egg-candling lights would be exempt from tax. Also, electricity, steam, or any taxable service used to power equipment which cleans and sterilizes food production equipment would be exempt from tax. Electricity used to power refrigerators used to store food samples for testing would be exempt from tax. Finally, electricity used to power "bug lights" or other insect-killing equipment used in areas where food products are manufactured or stored would be exempt from tax.

e. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or taxable service used in the formation of packaging for marketable food products for human consumption is exempt from tax. For example, electricity used in plastic bottle-forming machines by a food manufacturer is exempt from tax if the plastic bottles will be used to hold a marketable food product, such as milk. Any electricity, steam, or other taxable service used in the heating, compounding, liquefying and forming of plastic pellets into these plastic bottles is exempt.

f. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or taxable service used in placement of the food product into shipping containers is exempt from tax. For example, electricity used by a food manufacturer to place food products into packing cases, pallets, crates, shipping cases, or other similar receptacles is exempt.

g. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or taxable service used to move material which will become a marketable food product or used to move the marketable food product itself until shipment from the building of manufacture is exempt from tax. This includes, but is not limited to, taxable services used in pumps, conveyors, forklifts, and freight elevators moving the material or food product and taxable services used in door openers which open doors for forklifts or other devices moving the material or product. Any loading dock which is attached to a building of manufacture is a part of that building. Any electricity, steam, or taxable service used to move any food products to a loading dock is exempt from tax. If a food product is carried outside its building of manufacture by any conveyor belt system, electricity used by any portion of the system located outside the building is taxable.

This rule is intended to implement 2005 Iowa Code Supplement subsection 423.3(49).

701—230.3(423) Services used in processing. Electricity, steam, or any taxable service is used in processing only if the service is used in any operation which subjects raw material to some special treatment which changes, by artificial or natural means, the form, context, or condition of the raw material and results in a change of the raw material into marketable tangible personal property intended to be sold ultimately at retail. The following are nonexclusive examples of what would and would not be considered electricity, steam, or taxable services used in processing:

230.3(1) The sales price from the sale of electricity or steam consumed as power or used in the actual processing of tangible personal property intended to be sold ultimately at retail would be exempt from tax. The sales price is to be distinguished from that of electricity or steam consumed for the purpose of lighting, ventilating, or heating manufacturing plants, warehouses, or offices. The latter sales price would be taxable.

230.3(2) The sales price from electricity used in the freezing of tangible personal property, ultimately to be sold at retail, to make the property marketable would be exempt from sales tax. See *Fischer Artificial Ice & Cold Storage Co. v. Iowa State Tax Commission*, 81 N.W.2d 437 (Iowa 1957).

230.3(3) Electricity used merely in the refrigeration or the holding of tangible personal property for the purpose of preventing spoilage or to preserve the property in its present state would not be "used in processing" and, therefore, its sales price would be subject to tax. See *Fischer Artificial Ice, supra*.

Measurement of taxable and nontaxable use of electricity and steam. The exemption provided in the case of electricity or steam applies only upon the sales price from the sale of electricity or steam when

the energy is consumed as power or is used in the processing of food products or other tangible personal property intended to be sold ultimately at retail, as distinguished from electricity or steam which is consumed for taxable purposes. When practical, electricity or steam consumed as power or used directly in processing must be separately metered and separately billed by the supplier thereof to clearly distinguish energy so consumed from electricity or steam which is consumed for purposes or under conditions in which the exemption would not apply. If it is impractical to separately meter electricity or steam which is exempt from that electricity or steam upon which tax will apply, the purchaser must furnish an exemption certificate to the supplier with respect to what percentage of electricity or steam in the case of each purchaser is subject to the exemption. Reference 701—subrule 15.3(2). The exemption certificate must be supported by a study showing how the percentage was developed. When a certificate and study are accepted by the supplier as a basis for determining exemption, any changes in the processing method, changes in equipment or alterations in plant size or capacity affecting the percentage of exemption will necessitate the filing of a new and revised statement by the purchaser. When the electric or steam energy is separately metered, enabling the supplier to accurately apply the exemption in the case of processing energy, the purchaser need only file an exemption certificate since the supplier, under such conditions, will separately record and compute the consumption of energy which is exempt from tax apart from that energy which is subject to tax.

This rule is intended to implement Iowa Code section 423.3(49).

701—230.4(423) Chemicals, solvents, sorbents, or reagents used in processing. Chemicals, solvents, sorbents, and reagents directly used and consumed, dissipated, or depleted in processing tangible personal property intended to be sold ultimately at retail shall be exempt from sales and use tax. For the purpose of this processing exemption rule, free newspapers and shoppers' guides are considered to be retail sales. See 701—Chapter 211 for definition of the words "chemicals," "solvents," "sorbents," and "reagents."

For the purpose of this rule, a catalyst is considered to be a chemical, solvent, sorbent, or reagent. A catalyst is a substance which promotes or initiates a chemical reaction and, as such, is exempt from tax if consumed, dissipated, or depleted during processing of tangible personal property intended to be ultimately sold at retail.

To qualify for this exemption, all of the following conditions must be met:

1. The item must be a chemical, solvent, sorbent, or reagent.
2. The chemical, solvent, sorbent, or reagent must be directly used and consumed, dissipated, or depleted during processing as defined in referenced rule 701—18.29(422,423).
3. The processing must be performed on tangible personal property intended to be sold ultimately at retail.
4. The chemical, solvent, sorbent, or reagent need not become an integral or component part of the processed tangible personal property.

This rule is intended to implement Iowa Code section 423.3(50).

701—230.5(423) Exempt sales of gases used in the manufacturing process. Sales of argon and other similar gases to be used in the manufacturing process are exempt from tax. For the purposes of this rule, only inert gases are gases which are similar to argon. An "inert gas" is any gas which is normally chemically inactive. It will not support combustion and cannot be used as either a fuel or as an oxidizer. Argon, helium, neon, krypton, radon, and xenon are inert gases. Oxygen, hydrogen, and methane are nonexclusive examples of gases which are not inert. These sales are exempt only if the gas is purchased by a "manufacturer," for use in "processing," as those terms are defined in referenced 701—subrule 18.58(1).

This rule is intended to implement Iowa Code section 423.3(51).

701—230.6(423) Sale of electricity to water companies. The sales price from the sale of electricity to water companies assessed for property tax pursuant to Iowa Code sections 428.24, 428.26, and 428.28, which is used solely for the purpose of pumping water from a river or well is exempt from sales tax. For

the purposes of this rule, "river" means a natural body of water or waterway that is commonly known as a river. "Well," for the purposes of this rule, means an issue of water from the earth; a mineral spring; a pit or hole sunk into the earth to reach a water supply; a shaft or hole sunk to obtain oil, water, gas, etc.; or a shaft or excavation in the earth, in mining, from which run branches. *Pacific Gas and Electric Company v. Hufford*, 319 P.2d 1033, 1040 (Calif. 1957), citing Webster's New International Dictionary, 2nd ed., unabridged.

This rule is intended to implement Iowa Code section 423.3(52).

701—230.7(423) Wind energy conversion property. The sales price from the sale of property used to convert wind energy to electrical energy or the sales price from the sale of materials used to manufacture, install, or construct property used to convert wind energy to electrical energy is exempt from tax.

For the purposes of this rule, "property used to convert wind energy to electrical energy" means any device which converts wind energy to usable electrical energy including, but not limited to, wind chargers, windmills, wind turbines, pad mount transformers, substations, power lines, and tower equipment.

This rule is intended to implement Iowa Code section 423.3(53).

701—230.8(423) Exempt sales or rentals of core making and mold making equipment, and sand handling equipment. This rule is applicable to the period beginning on or after July 1, 2004.

230.8(1) *Exempt sales and rentals of machinery and equipment.* The sales price from sales or rentals of core making, mold making, and sand handling machinery and equipment directly and primarily used by a foundry in the mold making process is exempt from tax. For the purposes of this rule, a "foundry" is an establishment where metal, but not plastic, is melted and poured into molds. A nonexclusive list of equipment which may be exempt under this rule includes sand storage tanks, conveyers, patterns, mallor controllers, and sand mixers. A nonexclusive list of items which would not be exempted by this rule includes sand and other materials (as opposed to equipment) used to build molds or cores, and supplies. Services used in the mold making process are not exempted from tax by this rule. For the purposes of this rule, core making, mold making, and sand handling equipment also include replacement parts necessary for the operation of the equipment which is used directly and primarily by a foundry in the mold making process. Reference 701—subrule 18.58(1) for definitions of "directly used," "equipment," "machinery," "replacement part" and "supplies."

230.8(2) *Exempt sales of fuel and electricity.* The sales price from sales of fuel used in creating heat, power, or steam for, or used for generating electric current for, or electric current sold for use in machinery or equipment the sale or rental of which is exempt under subrule 230.8(1) is exempt from tax.

230.8(3) *Exempt design and installation services.* The sales price from furnishing design and installation services, including electrical and electronic installation, of machinery and equipment the sale or rental of which is exempt under subrule 230.8(1) is exempt from tax. Reference rule 701—26.16(422) for characterizations of the words "installation" and "electronic installation."

This rule is intended to implement Iowa Code section 423.3(82).

701—230.9(423) Chemical compounds used to treat water. Chemical compounds placed in water which is ultimately sold at retail should be purchased exempt from the tax. The chemical compounds become an integral part of property sold at retail. Chemical compounds placed in water which is directly used in processing are exempt from the tax, even if the water is consumed by the processor and not sold at retail.

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

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

This rule is intended to implement Iowa Code section 423.3(50).

701—230.10(423) Exclusive web search portal business and its exemption. Effective on or after July 1, 2007, a business that qualifies as a web search portal business that has a physical location in Iowa and that meets specific criteria may obtain an exemption from sales and use tax on specific purchases that are used in the operation and maintenance of the web search portal business. This exemption from sales and use tax also applies to the affiliates of a qualifying web search portal business.

230.10(1) *Definitions.* For the purpose of this exemption, the following definitions apply:

a. "Affiliate" means an entity that directly or indirectly controls, is controlled with or by, or is under common control with another entity.

b. "Control" means any of the following:

(1) In the case of a United States corporation, the ownership, directly or indirectly, of 50 percent or more of the voting power to elect directors.

(2) In the case of a foreign corporation, if the voting power to elect the directors is less than 50 percent, the maximum amount allowed by applicable law.

(3) In the case of an entity other than a corporation, 50 percent or more ownership interest in the entity, or the power to direct the management of the entity.

c. "Web search portal business" means an entity among whose primary businesses is to provide a search portal to organize information; to access, search, and navigate the internet, including research and development to support capabilities to organize information; and to provide internet access, navigation, and search functionalities.

230.10(2) *Criteria to claim exemption.* The following govern whether a business qualifies for an exemption from sales and use tax on purchases made or leases executed by a web search portal business:

a. All of the following requirements must be met by a web search portal business for the purpose of this exemption:

(1) The business of the purchaser or lessee shall be as a provider of a web search portal.

(2) The web search portal business shall have a physical location in Iowa that is used for the operations and maintenance of the web search portal site on the internet, including but not limited to research and development to support capabilities to organize information and to provide internet access, navigation, and search.

(3) The web search portal business shall make a minimum investment in an Iowa physical location of $200 million within the first six years of operation in Iowa beginning with the date the web search portal business initiates site preparation activities. The minimum investment includes the initial investment, including land and subsequent acquisition of additional adjacent land and subsequent investment at the Iowa location.

(4) The web search portal business shall purchase, option, or lease Iowa land not later than December 31, 2008, for any initial investment. However, the December 31, 2008, date shall not affect the future purchases of adjacent land and additional investment in the initial or adjacent land to qualify as part of the minimum investment for purposes of this exemption.

b. Aggregation to meet requirements. A web search portal business that is seeking an exemption from sales and use tax under this exemption may meet the requirements found in subparagraphs 230.10(2)*"a"*(1) to (4) above, by aggregating various Iowa investments and other requirements with its business affiliates.

c. Failure to meet investment qualifications. If a web search portal business claiming exemption from sales and use tax under this exemption fails to meet at least 80 percent of the minimum investment amount required within the first six years of operation beginning with the initiation of the site preparation activities by the web search portal business, the web search portal business will lose the right to claim this exemption from sales and use tax. Immediately following the loss of the right to claim this exemption from sales and use tax, the web search portal business is required to pay all sales or use taxes that would have been due on the purchase or rental of all purchases previously claimed exempt from sales and use tax, plus any and all applicable statutory penalty and interest due on the tax.

230.10(3) *Exempt purchases.* Sales and leases of the following are exempt from sales and use tax when sold or leased to a qualifying web search portal business:

a. Computers and equipment that are necessary for the maintenance and operation of the web search portal business;

b. All equipment used for the operation and maintenance of the cooling system for the computers and equipment used in the operation of the web search portal;

c. All equipment used for the operation and maintenance of the cooling towers for the cooling system referenced in paragraph *"b"* above;

d. All equipment used for the operation and maintenance of the temperature control infrastructure for the computers and equipment used in the operation of the web search portal;

e. All equipment used for the operation and maintenance of the power infrastructure that is used for the transformation, distribution, or management of electricity used for the operation and maintenance of the web search portal. This equipment includes, but is not limited to, exterior dedicated business-owned power substations, backup power generation systems, battery systems, and related infrastructure;

f. All equipment used in the racking system, including cabling and trays;

g. Fuel purchased by the web search portal business that is used in the backup power generation system and in all items listed in paragraphs *"a"* to *"f."* This provision includes the fuel used in backup generators that may be located outside of the building that are used if power is interrupted to ensure the web search portal continues operation; and

h. Electricity purchased for use in operating the web search portal.

230.10(4) *Limitation of exemption.* The purchases or leases of the items listed in subrule 230.10(3) are only exempt if the items being purchased or leased are being used in the operation or maintenance of the web search portal business. Such purchases or leases will not be exempt from sales or use tax if the item is to be used in the business for another purpose not related to operations or maintenance. Examples of items included in this limitation include but are not limited to:

a. Electricity not used for operation or maintenance, such as in the office or employee break room;

b. Tangible personal property used in areas of the web search portal facility that is not used for operation or maintenance, such as cleaning equipment and supplies;

c. Building materials that become part of real property, such as concrete, steel or roofing; and

d. Tangible personal property that becomes part of real property, such as a dishwasher.

230.10(5) *Initial date of exemption.* The exemption from sales and use tax begins on and after the date of the initial investment in or the initiation of site preparation activities for the facility that will contain the qualifying web search portal business.

This rule is intended to implement 2007 Iowa Code Supplement section 423.3(92).

701—230.11(423) Web search portal business and its exemption. Effective on or after July 1, 2008, a business that qualifies as a web search portal business that has a physical location in Iowa and that meets specific criteria may obtain an exemption from sales and use tax on specific purchases that are used in the operation and maintenance of the web search portal business. This exemption from sales and use tax also applies to the affiliates of a qualifying web search portal business.

230.11(1) *Definitions.* For the purpose of this exemption, the following definitions apply:

"Affiliate" means an entity that directly or indirectly controls, is controlled with or by, or is under common control with another entity.

"Control" means any of the following:

1. In the case of a United States corporation, the ownership, directly or indirectly, of 50 percent or more of the voting power to elect directors.

2. In the case of a foreign corporation, if the voting power to elect the directors is less than 50 percent, the maximum amount allowed by applicable law.

3. In the case of an entity other than a corporation, 50 percent or more ownership interest in the entity, or the power to direct the management of the entity.

"Web search portal business" means an entity whose business among other businesses is to provide a search portal to organize information; to access, search, and navigate the Internet, including research and development to support capabilities to organize information; or to provide Internet access, navigation, or search functionalities.

230.11(2) *Criteria to claim exemption.* The following governs whether a business qualifies for an exemption from sales and use tax on purchases made or leases executed by a web search portal business:

a. *Requirements.* All of the following requirements must be met by a web search portal business for the purpose of this exemption:

(1) The business, among other businesses, of the purchaser or lessee shall be as a provider of a web search portal.

(2) The web search portal business shall have a physical location in Iowa that is used for the operations and maintenance of the web search portal site on the Internet, including but not limited to research and development to support capabilities to organize information and to provide Internet access, navigation, and search functionality.

(3) The web search portal business shall make a minimum investment in an Iowa physical location of $200 million within the first six years of operation in Iowa beginning with the date the web search portal business initiates site preparation activities. The minimum investment includes the initial investment, including land and subsequent acquisition of additional adjacent land and subsequent investment at the Iowa location.

(4) The web search portal business shall purchase, option, or lease Iowa land not later than December 31, 2008, for any initial investment. However, the December 31, 2008, date shall not affect the future purchases of adjacent land and additional investment in the initial or adjacent land to qualify as part of the minimum investment for purposes of this exemption.

b. *Aggregation to meet requirements.* A web search portal business that is seeking an exemption from sales and use tax under this exemption may meet the requirements found in subparagraphs 230.11(2)*"a"*(1) to (4) by aggregating various Iowa investments and other requirements with its business affiliates.

c. *Failure to meet investment qualifications.* If a web search portal business claiming exemption from sales and use tax under this exemption fails to meet at least 80 percent of the minimum investment amount required within the first six years of operation beginning with the initiation of the site preparation activities by the web search portal business, the web search portal business will lose the right to claim this exemption from sales and use tax. Immediately following the loss of the right to claim this exemption from sales and use tax, the web search portal business is required to pay all sales or use taxes that would have been due on the purchase or rental of all purchases previously claimed exempt from sales and use tax, plus any and all applicable statutory penalty and interest due on the tax.

230.11(3) *Exempt purchases.* Sales and leases of the following are exempt from sales and use tax when sold or leased to a qualifying web search portal business:

a. Computers and equipment that are necessary for the maintenance and operation of the web search portal business;

b. All equipment used for the operation and maintenance of the cooling system for the computers and equipment used in the operation of the web search portal business;

c. All equipment used for the operation and maintenance of the cooling towers for the cooling system referenced in paragraph *"b"*;

d. All equipment used for the operation and maintenance of the temperature control infrastructure for the computers and equipment used in the operation of the web search portal business;

e. All equipment used for the operation and maintenance of the power infrastructure that is used for the transformation, distribution, or management of electricity used for the operation and maintenance of the web search portal business. This equipment includes, but is not limited to, exterior dedicated business-owned power substations; and back-up power generation systems, battery systems, and related infrastructure;

f. All equipment used in the racking system, including cabling and trays;

g. Fuel purchased by the web search portal business that is used in the back-up power generation system and in all items listed in paragraphs *"a"* to *"f."* This includes the fuel used in the back-up generators that may be located outside the building and that are used if power is interrupted to ensure the web search portal business continues operation; and

h. Electricity purchased for use in operating the web search portal business.

230.11(4) *Limitation of exemption.* The purchase or lease of the items listed in subrule 230.11(3) is only exempt if the items being purchased or leased are being used in the operation or maintenance of the web search portal business. Such purchases or leases will not be exempt from sales or use tax if the item is to be used in the business for another purpose. For example, the purchase of electricity for use in the office portion of the web search portal facility would not be exempt. The purchase of building materials that become real property would not be exempt. For example, the purchase of a dishwasher that will be built into a kitchen area in the break room for employees would not be exempt from tax. The purchase of a dishwasher is the purchase of tangible personal property. However, upon installation, the dishwasher becomes part of the building and realty and is not exempt from Iowa sales or use tax.

230.11(5) *Initial date of exemption.* The exemption from sales and use tax begins on and after the date of the initial investment in or the initiation of site preparation activities for the facility that will contain the qualifying web search portal business.

This rule is intended to implement Iowa Code section 423.3 as amended by 2008 Iowa Acts, House File 2233, section 1.

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CHAPTER 231
EXEMPTIONS PRIMARILY OF BENEFIT TO CONSUMERS

Rules in this chapter include cross references to provisions in 701—Chapters 15 to 20, 21, 26, 30, 32 and 33 that were applicable prior to July 1, 2004.

701—231.1(423) Newspapers, free newspapers and shoppers' guides.

231.1(1) *In general.* The sales price from the sales of newspapers, free newspapers, and shoppers' guides is exempt from tax. The sales price from the sales of magazines, newsletters, and other periodicals which are not newspapers is taxable. Cases decided by the United States Supreme Court and the Supreme Court of Iowa prohibit exempting from taxation the sale of any periodical if that exemption from taxation is based solely upon the contents of that periodical. See *Arkansas Writers' Project, Inc. v. Ragland,* 481 U.S. 221, 107 S.Ct. 1722, 95 L.Ed.2d 209 (1987) and *Hearst v. Iowa Department of Revenue & Finance,* 461 N.W.2d 295 (Iowa 1990).

231.1(2) *General characteristics of a newspaper.* "Newspaper" is a term with a common definition. A "newspaper" is a periodical, published at short, stated, and regular intervals, usually daily or weekly. It is printed on newsprint with news ink. The format of a newspaper is that of sheets folded loosely together without stapling. A newspaper is admitted to the U.S. mails as second-class material. Other frequent characteristics of newspapers are the following:

a. Newspapers usually contain photographs.

b. Information printed on newspapers is usually contained in columns on the newspaper pages.

c. The larger the cross section of the population which reads a periodical in the area where the periodical circulates, the more likely it is that the department will consider that periodical to be a "newspaper."

231.1(3) *Characteristics of newspaper publishing companies.* Often, companies publishing larger newspapers will subscribe to various syndicates or wire services. A larger newspaper will employ a general editor and a number of subordinate editors as well, for example, sports and lifestyle editors; business, local, agricultural, national, and world news editors; and editorial page editors. A larger newspaper will also employ a variety of reporters and staff writers. Smaller newspapers may or may not have these characteristics or may consolidate these functions.

231.1(4) *Characteristics which distinguish a newsletter from a newspaper.* A "newsletter" is generally distributed to members or employees of a single organization and not usually to a large cross section of the general public. It is often published at irregular intervals by a volunteer, rather than by a paid individual who usually publishes a newspaper. A newsletter is often printed on sheets which are held together at one point only by a staple, rather than folded together.

This rule is intended to implement 2005 Iowa Code subsection 423.3(54).

701—231.2(423) Motor fuel, special fuel, aviation fuels and gasoline.

231.2(1) *In general.* The sales price from the sale of motor fuel, including ethanol, and special fuel is exempt from sales tax under 2005 Iowa Code section 423.3(55) if (a) the fuel is consumed for highway use, in watercraft, or in aircraft, (b) the Iowa fuel tax has been imposed and paid, and (c) no refund or credit of fuel tax has been made or will be allowed. The sales price from the sale of special fuel for diesel engines used in commercial watercraft on rivers bordering Iowa is exempt from sales tax, even though no fuel tax has been imposed and paid, providing the seller delivers the fuel to the owner's watercraft while it is afloat.

231.2(2) *Refunds or credits of motor fuel and special fuel.* Claims for refund or credit of fuel taxes under the provisions of Iowa Code chapter 452A must be reduced by any sales or use tax owing the state unless a sales tax exemption is applicable. Generally, refund claims or credits are allowed where fuel is purchased tax-paid and used for purposes other than to propel a motor vehicle or used in watercraft.

231.2(3) *Refunds of tax on fuel purchased in Iowa and consumed outside of Iowa.* Even though fuel is purchased in Iowa, fuel tax is paid in Iowa, and the fuel tax is subject to refund under the provisions of division III of Iowa Code chapter 452A relating to interstate motor vehicle operations, the refund of

the fuel tax does not subject the purchase of the fuel to sales tax. Subjecting the purchase of the fuel to sales tax has the effect of imposing sales tax when fuel is consumed in interstate commerce while fuel consumed on Iowa highways in intrastate commerce is exempt from sales tax pursuant to 2005 Iowa Code subsection 423.3(55). The effect for sales tax purposes is to impose a greater tax burden on non-Iowa highway fuel consumption than Iowa highway fuel consumption, thereby discriminating against interstate commerce. In addition, the effect of imposing sales tax on interstate excess purchases where intrastate highway use is not subject to the tax constitutes an export duty for purchasing fuel in Iowa and exporting it for use in another state. Such effects are in violation of the commerce clause of the United States Constitution. *Boston Stock Exchange v. State Tax Commission,* 1977, 429 U.S. 319, 97 S.Ct. 599, 50 L.Ed.2d 514 and *Coe v. Errol,* 1886, 116 U.S. 517, 6 S.Ct. 475, 29 L.Ed. 715.

231.2(4) *Tax base.* The basis for computing the Iowa sales tax will be the retail sales price of the fuel less any Iowa fuel tax included in such price. Federal excise tax should not be removed from the sales price in determining the proper sales tax due. W. M. Gurley v. Arny Rhoden supra. Also reference rule 701—15.12(422,423).

This rule is intended to implement Iowa Code subsection 423.3(55).

701—231.3(423) Sales of food and food ingredients. On and after July 1, 2004, the sales price from all sales of food and food ingredients is exempt from tax. For the purposes of this rule, "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.

231.3(1) Most substances can easily be classified either as food, food ingredients, or nonfood items. There are, however, certain substances that are not readily distinguishable as food or nonfood and may present problems in judgment. The following guidelines apply to some of the more unique categories of eligible foods and food ingredients and ineligible nonfood items about which questions may arise. The guidelines and their lists are not to be considered all-inclusive:

a. Foods eligible for purchase with food coupons. Sales of almost all substances which may be purchased with food coupons issued by the United States Department of Agriculture under the regulations in effect on July 1, 1974, remain exempt from tax on and after July 1, 2004. However, since the exemption no longer depends on ability to be purchased with food stamps (reference 701—subrule 20.1(1)), sales of certain substances which can be purchased with food stamps but are neither food nor food ingredients are taxable on and after July 1, 2004.

These taxable sales include garden seeds and plants sold for use in gardens to produce food for human consumption. Seeds and plants eligible for purchase with food coupons include vegetable seeds and food-producing plants such as tomato and green pepper plants and fruit trees, food-producing roots, bushes, and bulbs (e.g., asparagus roots and onion sets) and seeds and plants used to produce spices for use in cooking foods. Sales of all these substances are taxable. Sales of chewing gum are taxable as sales of "candy" on and after July 1, 2004.

b. Distilled water and ice. These substances, although having some nonfood uses, are largely used as food or as ingredients in food for human consumption. Unless these substances are specifically labeled for nonfood use or the recipient indicates that they will be used for some purpose other than as food for human consumption or as ingredients in food for human consumption, their sales are exempt from tax.

c. Specialty foods. This category of eligible foods includes special dietary foods (e.g., diabetic and dietetic), enriched or fortified foods, infant formulas, and certain foods commonly referred to as health food items. These substances are food products which are substituted for more commonly used food items in the diet, and thus they are purchased for ingestion by humans and are consumed for their taste or nutritional value. Examples of items in this category of eligible foods are Metrecal, Enfamil, Sustegen, wheat germ, brewer's yeast, sunflower seeds which are packaged for human consumption, and rose hips powder which is used for preparing tea. It is not possible to formulate a comprehensive list of eligible specialty foods. The guideline to be used to determine the eligibility of a specific product is the ordinary use of the product.

NOTE: If the product is primarily used as a food or as an ingredient in food, then it is an eligible item; if it is primarily used for medicinal purposes as either a therapeutic agent or a deficiency corrector and only occasionally used as a food, the product is not an eligible item.

d. Snack foods. These substances are food items and, therefore, are usually eligible for the exemption. Typical examples of snack foods are cheese puffs; corn chips; popcorn; peanuts; potato chips and sticks; packaged cookies, cupcakes, and donuts; and pretzels. Alcoholic beverages, candy, and soft drinks are examples of snack foods the sales of which are not exempt from tax; see subrule 231.3(2).

e. Others. There are certain eligible food substances which are normally consumed only after being incorporated into foods sold for ingestion or chewing by humans. Sales of substances which are ingredients of items identical to those which are eligible for exemption when sold as finished products are sales eligible for exemption. Since these substances are food ingredients, their sales are exempt. An example is pectin. Pectin is the generic term for products marketed under various brand names and commonly used as a base in making jams and jellies. When pectin is incorporated into jams or jellies, it becomes part of a food for human consumption and, therefore, is an eligible food item. Other examples are lard and vegetable oils.

f. The following general classifications of food products are also exempt from tax unless taxable as prepared food; see rule 701—231.5(423):

Bread and flour products

Bottled water, unless it is a sweetened bottled water and thus taxable as a soft drink (a change from previous law; reference 701—subparagraph 20.1(3)*"b"*(1))

Cereal and cereal products

Cocoa and cocoa products, unless taxable in the form of candy as in rule 701—231.4(423)

Coffee and coffee substitutes, unless taxable as soft drinks; see paragraph 231.3(2)*"f"*

Dietary substitutes, other than dietary supplements; see paragraphs 231.3(1)*"c"* and 231.3(2)*"a"*

Eggs and egg products

Fish and fish products

Frozen foods

Fruits and fruit products including fruit juices, unless taxable as soft drinks; see paragraph 231.3(2)*"f"*

Margarine, butter, and shortening

Meat and meat products

Milk and milk products, including packaged ice cream products

Milk substitutes, such as soy and rice milk substitutes (a change from previous law; reference 701—subparagraph 20.1(3)*"b"*(2))

Spices, condiments, extracts, and artificial food coloring

Sugar and sugar products and substitutes, unless taxable in the form of candy as in rule 701—231.4(423)

Tea, unless taxable as a soft drink; see paragraph 231.3(2)*"f"*

Vegetables and vegetable products

231.3(2) Substances excluded from the term "food and food ingredients." Sales of alcoholic beverages, candy, dietary supplements, food sold through vending machines, prepared food, soft drinks, and tobacco are not sales of "food" and are not exempt from tax by this rule.

a. "Alcoholic beverages" means beverages that are suitable for human consumption and contain one-half of 1 percent or more of alcohol by volume.

b. "Candy." See rule 701—231.4(423).

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 Code of Federal Regulations 101.36.

Dietary supplements, as their name indicates, serve as supplements to food or food products rather than as "food," and, therefore, are not included within the definition of that word. Since these substances serve as deficiency correctors or therapeutic agents to supplement diets deficient in essential nutrition rather than as foods, they are not eligible for the food and food ingredients exemption. In addition to vitamin and mineral tablets or capsules, this category includes substances such as cod liver oil, which is used primarily as a source of vitamins A and D. It is not possible to provide a comprehensive list of other such items which are primarily used for medicinal purposes or as health aids and which may be stocked by authorized firms.

d. "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 if purchased with coupons (commonly known as "food stamps") issued under the federal Food Stamp Act of 1977, 7 United States Code 2011 et seq. Alcoholic beverages, candy, dietary supplements, prepared food, soft drinks, and tobacco sold through vending machines are sold subject to tax in all instances because they are specifically excluded from this rule's definition of "foods"; see subrule 231.3(2) generally. This paragraph *"d"* should be interpreted in such a fashion that if the sale of a substance is exempt from tax because it is a sale of "food" when the substance is sold by means other than a vending machine, then the sale of that same substance through a vending machine will also be exempt from tax. Conversely, if the sale of a substance by any means other than through a vending machine is taxable, then the sale of that same substance through a vending machine will also be taxable.

e. "Prepared food." See rule 701—231.5(423).

f. "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. Soft drinks may be noncarbonated. "Soft drinks" does not include beverages that contain milk or milk products; soy, rice, or similar milk substitutes; coffee and tea which are not sweetened; effervescent, noneffervescent, and mineral water sold in containers; beverages that contain greater than 50 percent of vegetable or fruit juice by volume. This latter is a change from the law as it existed prior to July 1, 2004, which required a volume of only 15 percent for exemption.

Taxable soft drinks are noncarbonated water and soda water if naturally or artificially sweetened; soft drinks carbonated and noncarbonated including but not limited to colas, ginger ale, near beer, and root beer; bottled and sweetened tea and coffee; lemonade, orangeade, and all other drinks or punches with natural fruit or vegetable juice less than 50 percent by volume.

Beverage mixes and ingredients intended to be made into soft drinks are taxable. Beverage mixes or ingredients may be liquid or frozen, concentrated or nonconcentrated, dehydrated, powdered, granulated, sweetened or unsweetened, seasoned or unseasoned. Sales of beverage mixes to which a sweetener is to be added before drinking are taxable. Concentrates intended to be made into beverages which contain natural fruit or vegetable juice of less than 50 percent by volume are taxable.

Beverages, the sales of which are otherwise exempt, are taxable if sold as prepared food under rule 701—231.5(423).

Nondairy coffee "creamers" in liquid, frozen or powdered form are not beverages. Sugar or other artificial or natural sweeteners sold separately are not taxable as beverage ingredients. Specialty foods that are liquids or that are to be added to a liquid and that are intended to be a substitute in the diet for more commonly used food items are not beverages and are not taxable as beverages. These foods include infant formula.

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

231.3(3) Other substances which are not food or food ingredients. Various products are not purchased for ingestion or chewing by humans or, if they are, are not consumed for their taste or nutritional value. Therefore, they are not purchased exempt from tax under this rule. They include, but are not limited to, the following:

a. Health aids. Over-the-counter medicines and other products used primarily as health aids or therapeutic agents are not foods since they are consumed for their medicinal value as opposed to their nutritional value or taste. Such products include aspirin, cough drops or syrups and other cold remedies, antacids, and all over-the-counter medicines or other products used as health aids. In addition to these commonly used health aids, any product used primarily for medicinal purposes is ineligible. An example of such products is slippery elm powder, a demulcent which is used to soothe sore throats.

b. Items not exempt. The following general classifications of products are subject to tax:

Cosmetics
Household supplies
Paper products
Pet foods and supplies
Soaps and detergents
Tobacco products
Toiletry articles
Tonics
Lunch counter foods or foods prepared for consumption on the premises of the retailer

This rule is intended to implement Iowa Code subsection 423.3(56).

701—231.4(423) Sales of candy.

231.4(1) *Definition.* Sales of candy were excluded from exemption prior to July 1, 2004; however, the definition of "candy" applicable to the exclusion was slightly different from the definition set out in this rule. Reference rule 701—21.1(422,423). For the purposes of this rule, "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. Any preparation to which flour has been added only for the purpose of excluding its sales from tax and not for any legitimate purpose, culinary or otherwise, shall not be sold exempt from tax under this rule.

231.4(2) *Candy, candy-coated items and candy products.* Candy-coated items and candy products include those products normally considered to be "candy." Their sales were taxable prior to July 1, 2004, and remain taxable after that date.

a. Candy. Candy is a prepared food made of a sugar paste or syrup or other natural or artificial sweeteners often enriched and varied with coloring and flavoring and formed into various shapes.

b. Candy-coated items. Candy-coated items are products like fruit or nuts which are dipped or otherwise substantially covered with candy and which would normally be considered candy and which are "candy" under the definition set out in subrule 231.4(1).

c. Candy products. Candy products include mixtures containing both candy and noncandy items. The inclusion of candy merely as an incidental ingredient in a product does not make the item a candy product.

d. Taxable candy, candy-coated items, and candy products. Candy, candy-coated items, and candy products include: preparation of fruits, nuts or other ingredients in combination with sugar, honey or other natural or artificial sweeteners in the form of bars, drops or pieces; hard or soft candies including jelly beans, taffy, licorice, and mints; dried fruit leathers or other similar products prepared with natural or artificial sweeteners; cotton candy; candy breath mints; chewing gum; and mixes of candy pieces, dried fruits, nuts, and similar items.

Sales of items which are normally sold for use as ingredients in recipes but which can be eaten as candy are taxable on and after July 1, 2004. Examples of these items include but are not limited to the following: white, milk, and German chocolate baking squares; unsweetened or sweetened baking chocolate in bars or pieces; white and dark chocolate almond bark; toffee bits; M&M's sold for

baking; candy primarily intended for decorating baked goods; and the following baking chips: mint, mint-chocolate, peanut butter, peanut butter and chocolate, butterscotch, chocolate, and butterscotch and chocolate.

e. Nontaxable items and products. Candy, candy-coated items, or candy products do not include: jams, jellies, preserves, or syrups; frostings; dried fruits; marshmallows; breakfast cereals; prepared fruit in a sugar or similar base; ice cream or other frozen desserts covered with chocolate or similar coverings; caramel-coated or other candy-coated apples or other fruit; candy-coated popcorn; cakes, cookies, and similar products covered with chocolate or other similar coating; and granola bars. However, these and similar items are taxable if sold as prepared food under rule 701—231.5(423).

This rule is intended to implement 2005 Iowa Code subsection 423.3(56).

701—231.5(423) Sales of prepared food. On and after July 1, 2004, sales of "prepared food" are subject to tax as such sales were taxable prior to that date. However, before and after that date, the definitions of "prepared food" differ slightly. Reference rule 701—20.5(423) for a description of the taxation of "prepared food" prior to July 1, 2004.

231.5(1) *Prepared food.*

a. On and after July 1, 2004, "prepared food" means any of the following:

(1) **(**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) 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.

The types of retailers who are generally considered to be offering prepared food for sale include restaurants, coffee shops, cafeterias, convenience stores, snack shops, and concession stands including those at recreation and entertainment facilities. Other retailers that often offer prepared food include vending machine retailers, mobile vendors, and concessionaires operating facilities for such activities as education, office work, or manufacturing.

If food is sold for consumption on the premises of a retailer, the food is rebuttably presumed to be prepared food. "Premises of a retailer" means the total space and facilities under control of the retailer or available to the retailer, including buildings, grounds, and parking lots that are made available or that are available for use by the retailer, for the purpose of sale of prepared food and drink or for the purpose of consumption of prepared food and drink sold by the retailer. Availability of self-service heating or other preparation facilities or eating facilities such as tables and chairs and knives, forks, and spoons, indicates that food, food products, and drinks are sold for consumption on the premises of the retailer and are subject to tax as sales of prepared food.

The following examples are intended to show some of the situations in which sales are taxable as sales of prepared food and drink.

EXAMPLE A. A movie theater owner operates a movie theater and a concession stand in the lobby of the theater. There is not a separate area set aside for eating facilities. Sales of prepared food and drink through the concession stand are taxable.

EXAMPLE B. As a convenience to employees, a manufacturer owns and operates several food and drink vending machines located on the premises of the plant. No separate seating or other facilities for eating are provided. Sales of prepared food and drink through the vending machines are taxable.

EXAMPLE C. Mobile vendor units located throughout an office are operated by the owner of the business and are stocked with snack food priced to cover the cost of the items to the employer. No separate eating facilities are provided. Sales of prepared food through the mobile vendors are taxable.

EXAMPLE D. An insurance company hires a caterer to run a cafeteria which provides food, at a low cost, to its employees. The insurance company also pays the caterer an amount, per month, which varies with the number of meals the caterer serves to provide this food service. The caterer does not lease the cafeteria premises; thus the premises remains under the control of the insurance company. In this case, the caterer sells the food in a space made "available to the retailer [caterer]," and the amount which the

insurance company pays, on a monthly basis, to the caterer is presumed to be the taxable sales price from the sale of prepared food, as well as the amount paid by the employees to the caterer.

b. "Prepared food," for the purposes of this rule, does not include food that is any of the following:

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

(2) 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 food-borne illnesses.

(3) Bakery items sold by the seller that baked them. The term "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. On and after July 1, 2004, baked goods sold for consumption on the premises by the seller that baked them are sold exempt from tax. This is a change from previous law; reference 701—subrule 20.5(2), Example D.

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

231.5(2) *Examples.* The following are additional examples of foods that either are or are not "prepared foods," the sales price of which is taxable.

EXAMPLE A: A supermarket retailer cuts Bibb and romaine lettuce, mixes them together, and places them in a bag for sale. This is food which is only cut and repackaged. Its sale is not the sale of prepared food; thus its sale is exempt from tax.

EXAMPLE B: The same factual situation as Example A above applies, except that the lettuce is mixed with a salad dressing, placed in a container, and sold as a salad which is ready to eat. Sale of the salad is a taxable sale of "prepared food."

EXAMPLE C: A supermarket retailer slices a roll of cotto salami and a roll of regular salami. The retailer places ten slices of each in the same container and sells the combination as an Italian luncheon meat variety pack. This is, again, the sale of food which is only cut and repackaged. The sale of the salami is exempt from tax.

EXAMPLE D: The same factual circumstances as in Example C apply, except that the retailer takes the sliced salami, places it between two slices of bread, adds some condiments, surrounds the meat, bread, and condiments with plastic, and sells the result as a ready-to-eat sandwich. This is prepared food, "two or more food ingredients . . . combined by the seller for sale as a single item," and more is done to the ingredients than cutting and repackaging. Sales of the sandwiches are taxable.

This rule is intended to implement 2005 Iowa Code subsection 423.3(56).

701—231.6(423) Prescription drugs, medical devices, oxygen, and insulin. Sales of prescription drugs and medical devices as defined in subrule 231.6(1) and dispensed for human use or consumption in accordance with subrules 231.6(3) and 231.6(4) shall be exempt from sales tax. Rentals of medical devices as defined in subrule 231.6(1) are also exempt from tax. The sales price from the sales of any oxygen or insulin purchased for human use or consumption (whether or not the oxygen or insulin is prescribed) is exempt from tax.

231.6(1) *Definitions.*

"Medical device" means durable medical equipment or mobility enhancing equipment intended to be prescribed by a practitioner for human use. See rule 701—231.8(423) for definitions of those terms.

"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.

"Ultimate user" means any 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. The phrase does not include any entity created by law, such as a corporation or partnership.

231.6(2) *Tax exemption.* The sale of a prescription drug is exempt from tax only if the drug is intended to be prescribed or dispensed to an ultimate user. A drug is intended to be prescribed or dispensed to an ultimate user only if the drug is obtained by or supplied or administered to an ultimate user for placement on or in the ultimate user's body.

EXAMPLE A: A physician prescribes a tranquilizer for a patient who is chronically nervous. The patient uses the prescription to purchase the tranquilizer at a pharmacy. The purchase is exempt from tax.

For purposes of this subrule, any drug prescribed in writing by a licensed physician, surgeon, osteopath, osteopathic physician or surgeon, or other person authorized by law to an ultimate user for human use or consumption shall be deemed a drug exempt from tax if a prescription is required or permitted under Iowa state or federal law.

EXAMPLE B: A common painkiller is sold over the counter in doses of 200 milligrams per tablet. In doses of 600 milligrams per tablet, federal law requires a prescription before the drug can be dispensed. Sales of 600 milligram tablets by prescription are exempt from tax.

EXAMPLE C: A federal law permits but does not require the painkiller mentioned in Example B to be prescribed by a practitioner in dosages of 200 milligrams per tablet. A practitioner might prescribe the painkiller in the over-the-counter dosage, for example, to impress upon a patient the importance of taking the drug. Sales of 200 milligram tablets by prescription are exempt from tax.

See rules 701—231.7(423) and 701—231.8(423) for examples of medical devices sold without a prescription but exempt from tax.

231.6(3) *Persons authorized to dispense prescription drugs or prescription devices.* In order for a prescription drug or device to qualify for an exemption, it must be dispensed by one of the following persons:

a. Any store or other place of business where prescription drugs are compounded, dispensed or sold by a person holding a license to practice pharmacy in Iowa, and where prescription orders for prescription drugs or devices are received or processed in accordance with pharmacy laws.

b. Persons licensed by the state board of medical examiners to practice medicine or surgery in Iowa.

c. Persons licensed by the state board of medical examiners to practice osteopathic medicine or surgery in Iowa.

d. Persons licensed by the state board of podiatry examiners to engage in the practice of podiatry in Iowa.

e. Persons licensed by the state board of dental examiners to practice dentistry in Iowa.

f. Persons licensed by the state board of optometry examiners as therapeutically certified optometrists.

g. Persons licensed by the state board of chiropractic examiners to practice chiropractic in Iowa, when dispensing in accordance with Iowa Code chapter 151.

h. Persons licensed as advanced registered nurse practitioners by the board of nursing when prescribing and dispensing in accordance with Iowa Code subsection 147.107(8).

i. Any other person authorized under Iowa law to dispense prescription drugs or devices in this state.

j. Any person licensed in another state in a health field in which, under Iowa law, licensees in this state may legally prescribe drugs or devices.

231.6(4) *Disposition of prescription drugs and devices.* Prescription drugs or devices may be dispensed either directly from one of the persons licensed in 231.6(3) who may also prescribe drugs or devices or by a pharmacist upon receipt of a prescription from one of the persons licensed to prescribe. A prescription received by a licensed pharmacist from one of the persons licensed in 231.6(3) who may also prescribe drugs or devices shall be sufficient evidence that a drug or device is exempt from sales tax. When a person who prescribes a drug or device is also the dispenser, the drug or device will not require a prescription by such person, but the drug or device must be recorded as if a prescription would have been issued or required. If this condition is met, the sales price from the sale of the drug or device shall be exempt from sales tax.

231.6(5) *Others required to collect sales tax.* Any person other than those who are allowed to dispense drugs or devices under 231.6(3) shall be required to collect sales tax on any prescription drugs or devices.

231.6(6) *Prescription drugs and devices purchased by hospitals for resale.* This subrule applies to for-profit hospitals only. Hospitals have purchased prescription drugs or devices for resale to patients and not for use or consumption in providing hospital services only if the following circumstances exist: (a) the drug or device is actually transferred to the patient; (b) the drug or device is transferred in a form or quantity capable of a fixed or definite price value; (c) the hospital and the patient intend the transfer to be a sale; and (d) the sale is evidenced in the patient's bill by a separate charge for the identifiable drug or device. Reference rule 701—18.31(422,423) for a discussion generally of sales for resale by persons performing a service. Also reference rule 701—18.59(422,423) for the exemption applicable to all purchases of goods and services by a nonprofit hospital licensed under Iowa Code chapter 135B.

EXAMPLE A: A hospital purchases a bone saw blade and uses the blade to cut the bone of patient X during hip replacement surgery. This dulls the blade to the point that the blade cannot be used again and is discarded. The hospital bills patient X for "one bone saw blade—$30." In spite of the separate charge for an identifiable piece of property, the hospital did not purchase the bone saw blade for resale. The blade was used up by the hospital, not transferred to the ownership of X. Since there was no transfer, there was no sale, thus no purchase for resale.

EXAMPLE B: A hospital buys lotion for use in massages given to patients by a nurse's aide. In spite of the fact that one can argue that a transfer of ownership of the lotion from hospital to patient occurred, the lotion was not purchased for resale. No real intent to sell the lotion to patients ever existed; the lotion was not transferred to patients in a quantity capable of a definite price value; and there is no separate charge for the lotion.

A hospital's purchase of a prescription drug for purposes other than resale will still be exempt from tax if a drug is intended to be prescribed to an ultimate user and the hospital's use of the drug is otherwise exempt under 231.6(1).

This rule is intended to implement 2005 Iowa Code Supplement subsection 423.3(60).

701—231.7(423) Exempt sales of other medical devices which are not prosthetic devices. A prescription is not required for sales of the medical devices listed in subrule 231.7(1) to be exempt from tax if those devices are purchased for human use or consumption.

231.7(1) Definitions.

"Anesthesia trays" includes, without limit, paracervical anesthesia trays, saddle block anesthesia trays, spinal anesthesia trays, and continuous epidural anesthesia trays.

"Biopsy" means the removal and examination of tissue from a living body, performed to establish a precise diagnosis.

"Biopsy needles" includes, without limit, needles used to perform liver, kidney, other soft tissue, bone, and bone marrow biopsies. Menghini technique aspirating needles, Rosenthal-type needles, and "J" Jamshidi needles are all examples of biopsy needles.

"Cannula" means a tube inserted into a body duct or cavity to drain fluid, insert medication including oxygen, or to open an air passage. Examples are lariat nasal cannulas and ableson cricothyrotomy cannulas.

"Catheter" means a tubular, flexible, surgical instrument used to withdraw fluids from or introduce fluids into a body cavity, or for making examinations. Examples are: Robinson/nelation catheters, all types of Foley catheters (e.g., pediatric and irrigating), three-way catheters, suction catheters, IV catheters, angiocath catheters and male and female catheters.

"Catheter trays." Universal Foley catheter trays, economy Foley trays, urethral catherization trays and catheter trays with domed covers are nonexclusive examples of these trays.

"Diabetic testing materials" means all materials used in testing for sugar or acetone in the urine, including, but not limited to, Clinitest, Tes-tape, and Clinistix; also, all materials used in monitoring the glucose level in the blood, including, but not limited to, bloodletting supplies and test strips.

"Drug infusion device" means a device designed for the slow introduction of a drug solution into the human body. The term includes devices which infuse by means of pumps or gravity flow (drip infusion).

"Fistula" means an abnormal passage usually between the internal organs or between an internal organ and the surface of the body.

"Hypodermic syringe" means an instrument for applying or administering liquid into any vessel or cavity beneath the skin. This includes the needle portion of the syringe if it accompanies the syringe at the time of purchase, and it also includes replacement needles.

"Insulin" means a preparation of the active principle of the pancreas, used therapeutically in diabetes and sometimes in other conditions.

"Kit" means a combination of medical equipment and supplies used to perform one particular medical procedure which is packaged and sold as a single item.

"Myelogram" means a radiographic picture of the spinal cord. A "radiographic picture" is one taken using radiation other than visible light.

"Nebulizer" means a mechanical device which converts a liquid to a spray or fog.

"Other medical device," for the purposes of this rule, means medical equipment or supplies intended to be dispensed for human use with or without a prescription to an ultimate user.

"Oxygen equipment" means all equipment used to deliver medicinal oxygen including, but not limited to, face masks, humidifiers, cannulas, tubing, mouthpieces, tracheotomy masks or collars, regulators, oxygen concentrators and oxygen accessory racks or stands.

"Set." See "kit" above.

"Tray." See "kit" above.

231.7(2) Sales of the following other medical devices are exempt from tax:

a. Sales of insulin, hypodermic syringes, and diabetic testing materials.

b. Sales and rentals of oxygen equipment.

c. Sales of hypodermic needles, anesthesia trays, biopsy trays and needles, cannula systems, catheter trays, invasive catheters, dialyzers, drug infusion devices, fistula sets, hemodialysis devices, insulin infusion devices, irrigation solutions, intravenous administering sets, solutions and stopcocks, myelogram trays, nebulizers, small vein infusion kits, spinal puncture trays, transfusion sets and venous blood sets, all of which are not taxable.

231.7(3) Component parts. Sales of any component parts of the trays, systems, devices, sets, or kits listed above are taxable unless the sale of a component part, standing alone, is otherwise exempt under these rules. For instance, the sale of a biopsy needle or an invasive catheter will be exempt from tax whether or not it was purchased for use as a component part in a biopsy tray or catheter tray, so long as the needle or catheter will be dispensed for human use to an ultimate user. Conversely, sales of catheter introducers, disposable latex gloves, rayon balls, forceps, and specimen bottles are exempt when those items are sold as part of a catheter tray, but are not exempt when those items are sold individually.

This rule is intended to implement 2005 Iowa Code Supplement subsection 423.3(60).

701—231.8(423) Prosthetic devices, durable medical equipment, and mobility enhancing equipment.

231.8(1) *Prosthetic devices.* Sales or rental of prosthetic devices shall be exempt from sales tax.

231.8(2) *Durable medical equipment and mobility enhancing equipment.* Sales or rental of durable medical equipment and mobility enhancing equipment prescribed for human use which meet the provisions of subrules 231.8(3) and 231.8(4) shall be exempt from sales tax. "Prescribed" refers to a prescription issued in any form of oral, written, electronic, or other means of transmission by any of the persons described in paragraphs *"a"* through *"j"* of subrule 231.6(3).

231.8(3) *Definitions.*

a. *"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.

b. *"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.

c. *"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.

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

The following is a nonexclusive list of prosthetic devices:

Artificial arteries	Drainage bags	Prescription eyeglasses
Artificial breasts	Hearing aids	Stoma bags
Artificial ears	Ileostomy devices	Tracheal suction catheters
Artificial eyes	Intraocular lenses	Tracheostomy care and
Artificial heart valves	Karaya paste	cleaning starter kits
Artificial implants	Karaya seals	Tracheostomy cleaning
Artificial larynx	Organ implants	brushes
Artificial limbs	Ostomy belts	Tracheostomy tubes
Artificial noses	Ostomy clamps	Urinary catheters
Artificial teeth	Ostomy cleaners	Urinary drainage bags
Cardiac pacemakers	and deodorizers	Urinary irrigation tubing
Contact lenses	Ostomy pouches	Urinary pouches
Cosmetic gloves	Ostomy stoma caps and paste	
Dental bridges and implants	Penile implants	

d. *"Orthotic device"* means a piece of special equipment designed to straighten a deformed or distorted part of the human body, such as corrective shoes or braces. An orthotic device is an orthopedic device.

e. *"Orthopedic device"* means a piece of special equipment designed to correct deformities or to preserve and restore the function of the human skeletal system, its articulations and associated structures. A hot tub or spa is not an orthopedic device.

The following is a nonexclusive list of orthopedic devices:

Abdominal belts	Clavicle splints	Nerve stimulators
Alternating pressure mattresses	Corrective braces	Orthopedic implants
Alternating pressure pads	Corrective shoes	Orthopedic shoes
Anti-embolism stockings	Crutch cushions	Patient lifts
Arch supports	Crutch handgrips	Plaster (surgical)
Arm slings	Crutch tips	Rib belts
Artificial sheepskin	Crutches	Rupture belts

Bone cement	Decubitus prevention devices	Sacroiliac supports
Bone nails	Dorsolumbar belts	Sacrolumbar belts
Bone pins	Dorsolumbar supports	Sacrolumbar supports
Bone plates	Elastic bandages	Shoulder immobilizers
Bone screws	Elastic supports	Space shoes
Bone wax	Exercise devices	Splints
Braces	Head halters	Traction equipment
Canes	Hernia belts	Transcutaneous electrical nerve stimulators (tens units)
Casts	Iliac belts	Trapezes
Cast heels	Invalid rings	Trusses
Cervical braces	Knee immobilizers	Walkers
Cervical collars	Lumbosacral supports	Wheelchairs
Cervical pillows	Muscle stimulators	

f. *"Related devices."* Sales or rental of devices which are used exclusively in conjunction with prosthetic, orthotic, or orthopedic devices shall be exempt from tax. *Daw Industries, Inc. v. United States,* 714 F.2d 1140 (Fed. Cir. 1983).

g. *"Medical equipment and supplies."* The scope of the term "medical equipment and supplies" is broader than the terms "prescription drugs" or "medical devices." While all exempt prescription drugs are medical supplies and all exempt medical devices are medical equipment, not all medical equipment and supplies are exempt medical devices or prescription drugs. The following is a nonexclusive list of items which are medical equipment or supplies, but are not prescription drugs or medical devices exempt from tax under subrules 231.6(1), 231.8(1), and 231.8(2) and rule 701—231.7(423). Sales of the following items are generally taxable.

Adhesive bandages	Contact lens solution	Hot water bottles
Aneurysm clips	Convoluted pads	Ice bags
Arterial bloodsets	Corrective pessaries	Ident-a-bands
Aspirators	Cotton balls	Incontinent garments
Athletic supporters	Diagnostic kits	Incubators
Atomizers	Dialysis chairs	Infrared lamps
Autolit	Dialysis supplies	Inhalators
Back cushions	Dietetic scales	Iron lungs
Bathing aids	Disposable diapers	Irrigation apparatus
Bathing caps	Disposable gloves	IV connectors
Bedpans	Disposable underpads	Laminar flow equipment
Bedside rails	Donor chairs	Latex gloves
Bedside tables	Dressings	Leukopheresis pumps
Bedside trays	Dry aid kits for ears	Lymphedema pumps
Bedwetting prevention devices	EKG paper	Manometer trays
Belt vibrators	Ear molds	Massagers
Blood cell washing equipment	Electrodes (other than tens units)	Maternity belts
Blood pack holders	Emesis basins	Medigrade tubing
Blood pack trays	Enema units	Modulung oxygenators
Blood pack units	First-aid kits	Moist heat pads
Blood pressure meters	Foam slant pillows	Myringotomy tubes
Blood processing supplies	Gauze bandages	Nebulizers (hypodermic)

Blood tubing	Gauze packings	Overbed tables
Blood warmers	Gavage containers	Page turning devices
Breast pumps	Geriatric chairs	Pap smear kits
Breathing machines	Grooming aids	Paraffin baths
Cardiac electrodes	Hand sealers	Physicians' instruments
Cardiopulmonary equipment	Hearing aid carriers	Pigskin
Chair lifts	Hearing aid repair kits	Plasma extractors
Clamps	Heart stimulators	Plasma pheresis units
Clip-on ashtrays	Heat lamps	Plastic heat sealers
Commode chairs	Heat pads	Prescribed device repair kits and batteries
Connectors	Hemolators	Respirators
Contact lens cases	Hospital beds	Resuscitators
Sauna baths	Steri-peel	Transfer boards
Security pouches	Stools	Tube sealers
Servipak dialysis supplies	Suction equipment	Underpads
Shelf trays	Sunlamps	Urinals
Shower chairs	Surgical bandages	Vacutainers
Side rails	Surgical equipment	Vacuum units
Sitz bath kit	Suspensories	Vaporizers
Specimen containers	Sutures	Vibrators
Sponges (surgical)	Thermometers	Whirlpools
Stairway elevators	Toilet aids	X-ray film
Staples	Tourniquets	

231.8(4) *Power devices.* Sales or rental of power devices especially designed to operate prosthetic, orthotic or orthopedic devices shall be exempt from tax. This exemption does not include batteries which can be used to operate a number of devices, but batteries designed solely for use in hearing aids are exempt.

This rule is intended to implement 2005 Iowa Code Supplement subsection 423.3(60).

701—231.9(423) Raffles. The sales price from the sale of tickets for a raffle conducted at a fair pursuant to Iowa Code section 99B.5 is not subject to tax.

This rule is intended to implement 2005 Iowa Code subsection 423.3(61).

701—231.10(423) Exempt sales of prizes. The sales price from sales 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 and lawful under Iowa Code chapter 99B is exempt from tax. See department of inspections and appeals' 481—Chapters 100 through 106, Iowa Administrative Code, for a description of the games of skill, games of chance, raffles, and bingo games which are lawful. See rule 481—100.6(99B) for a description of the prizes which may be lawfully awarded. A gift certificate is not tangible personal property. If a person wins a gift certificate as a prize and then redeems the gift certificate for merchandise, tax is payable at the time the gift certificate is redeemed. Reference 701—15.16(422,423).

This rule is intended to implement 2005 Iowa Code subsection 423.3(62).

701—231.11(423) Modular homes. Forty percent of the sales price from the sale of a modular home is exempt from tax. A "modular home" is any structure built in a factory, made to be used as a place for

human habitation, which cannot be attached or towed behind a motor vehicle and which does not have permanently attached to its body or frame any wheels or axles.

This rule is intended to implement 2005 Iowa Code subsection 423.3(63).

701—231.12(423) Access to on-line computer service. The sales price from charges paid to a provider for access to an on-line computer service is exempt from tax. An "on-line computer service" is one which provides for or enables multiple users to have computer access to the Internet. Also, the furnishing of any contracted on-line service is exempt from Iowa tax if the information is made available through a computer server. The exemption applies to all contracted on-line services, as long as they provide access to information through a computer server.

This rule is intended to implement 2005 Iowa Code subsection 423.3(64).

701—231.13(423) Sale or rental of information services. The sales price from the service of the sale or rental of information services is exempt from tax. This exemption does not repeal by implication the tax on the performance of the services of investment counseling, service charges of all financial institutions, private employment agencies, test laboratories, detective services, or any other services enumerated by statute. Those services remain taxable; reference 701—Chapter 26 generally.

"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 particular buyer (or its agent) of the information through any tangible or intangible medium. Information accumulated, prepared, or organized for a particular buyer, its agent, a group of buyers, or their agent is an information service even though it may incorporate preexisting components of data or other information.

Information services include, but are 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, scouting reports, white and yellow page listings, and other similar items of compiled information prepared for a particular customer. The furnishing of artwork (including musical compositions and films), drawings, illustrations, or other graphic material is not the performance of an "information service"; nor does the term include information prepared for general dissemination to the public in the form of books, magazines, newsletters, videotapes or audiotapes, compact discs, or any other medium commonly used to communicate with large numbers of customers. The sale of a book, magazine, or similar item is not the sale of an information service, even if the item contains material of practical use (e.g., in conducting a private, for-profit business) to its purchaser.

The following specific examples illustrate the general principles set out above.

EXAMPLE A. John Doe buys a packaged set of preprinted documents and instructions which anyone may purchase and which is entitled "Legal Eagle." Mr. Doe prepares his own will by reading the instructions, making choices and filling in the blanks on the preprinted documents. Mr. Doe has purchased tangible personal property and not an information service. His purchase is taxable.

EXAMPLE B. A taxpayer buys a book entitled "Doing Your Own Iowa Individual Income Tax," which is written by an accountant and is available to any buyer. The taxpayer uses the book to prepare her own IA 1040. Since her purchase contains information prepared for general dissemination to the public in the form of a book, that purchase is a taxable sale of tangible personal property and not an exempt sale of an information service.

EXAMPLE C. The seller provides, for a fee, a weekly bulletin listing information on real estate of use to brokers selling homes in a certain Iowa county. The seller secures the information from a multiple listing service without applying any independent thought during the compiling of that information. The bulletin is useful only to those brokers and not to the general public. Since the bulletin is a "real estate listing" and has been prepared for a particular group of customers and not for the general public, its sale is the sale of an information service rather than the sale of tangible personal property and is thus exempt from tax.

EXAMPLE D. A-1 Corporation sells gourmet meats through the mail. A-1 rents its list of customers to whom it mails its catalog to other retailers that specialize in sales of goods or services to the wealthy. Since the list is a "mailing list" and made available only to a particular group of buyers, its rental is the performance of an exempt information service and not the taxable rental of tangible personal property.

EXAMPLE E. Company E is a tariff bureau which specializes in compiling and preparing tariff schedules. E acquires these schedules from various companies throughout the country. E then provides these schedules to common carriers that subscribe to its service. Its printed tariff schedules are published in bound and loose-leaf form; they may be updated daily. E's providing the schedules is the performance of an exempt information service because the schedules are compiled for a particular group of customers and they are items of compiled information similar to the files, lists, reports, and other information services named above. E's services are not subject to tax.

EXAMPLE F. Company F compiles and prints telephone directories. F purchases white and yellow page listings from various telephone companies and uses those listings to make up its directories. F's purchases of the white and yellow page listings are purchases of an exempt information service. Any sales on F's part of the directories to the general public would be sales of tangible personal property subject to tax.

EXAMPLE G. Company G purchases the assets of four businesses. The primary asset of each of the businesses is a database containing names, addresses, and other customer information of use to G but not to anyone other than a company similar to G. G transfers the lists to its own computers by way of paper or magnetic tape. G has purchased an exempt information service with its purchases of the four databases.

This rule is intended to implement 2005 Iowa Code subsection 423.3(65).

701—231.14(423) Exclusion from tax for property delivered by certain media. A taxable "sale" of tangible personal property does not occur if the substance of the transaction is delivered to the purchaser digitally, electronically, or by utilizing cable, radio waves, microwaves, satellites, or fiber optics. This exclusion from tax is also applicable to the leasing of tangible personal property, since a lease is classified as a "sale" of tangible personal property for the purposes of Iowa sales and use tax law. The exclusion is not applicable to property delivered by any medium other than those listed above. Sales of items such as artwork, drawings, photographs, music, electronic greeting cards, "canned" software (reference 701—subrule 18.34(1)), entertainment properties (e.g., films, concerts, books, and television and radio programs), and all other digitized products delivered as described above are not taxable, except the exclusion does not repeal by implication the tax on the service of providing pay television. Reference rule 701—26.56(422,423). If an order for a product is placed by way of any of the media described above but the product ordered is delivered by conventional, physical means, e.g., the U.S. Postal Service or common carrier, sale of the product is not excluded from tax under this rule.

The department considers delivery of tangible personal property to a purchaser by way of a "load and leave" transaction to be delivery by the use of conventional physical means. The sales price from the purchase of property delivered through a load and leave transaction is not exempt from tax under this rule. "Load and leave" means delivery to the purchaser by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.

This rule is intended to implement 2005 Iowa Code subsection 423.3(66) and Iowa Code chapter 423, subchapter IV.

701—231.15(423) Exempt sales of clothing and footwear during two-day period in August. Tax is not due on the sale or use of a qualifying article of clothing or footwear if the sales price of the article is less than $100 and the sale takes place during a period beginning at 12:01 a.m. on the first Friday in August and ending at 12 midnight of the following Saturday. For example, in the year 2004, this period began at 12:01 a.m. on Friday, August 6, and ended at 12 midnight on Saturday, August 7. Eligible purchases of clothing and footwear are exempt from local option sales taxes as well as Iowa state sales tax.

231.15(1) *Definitions.* The following words and terms, when used in this rule, shall have the following meanings, unless the context clearly indicates otherwise.

"Accessories" includes, but is not limited to, jewelry, handbags, purses, briefcases, luggage, wallets, watches, cufflinks, tie tacks and similar items carried on or about the human body, without regard to whether worn on the body in a manner characteristic of clothing.

"Clothing or footwear" means an article of wearing apparel designed to be worn on or about the human body. For the purposes of this rule, the term does not include accessories or special clothing or footwear or articles of wearing apparel designed to be worn by animals.

"Eligible property" means an item of a type, such as clothing, that qualifies for Iowa's sales tax holiday.

"Special clothing or footwear" is clothing or footwear primarily designed for athletic activity or protective use and which is not normally worn except when used for the athletic activity or protective use for which it is designed.

231.15(2) *Exempt sales.*

a. Required price. The exemption applies to each article of clothing or footwear selling for less than $100, regardless of how many items are sold on the same invoice to a customer. For example, if a customer purchases two shirts for $80 each, both items qualify for the exemption even though the customer's total purchase price ($160) exceeds $99.99. The exemption does not apply to the first $99.99 of an article of clothing or footwear selling for more than $99.99. For example, if a customer purchases a pair of pants costing $110, sales tax is due on the entire $110.

b. Order date and back orders. For the purpose of the sales tax holiday, eligible property qualifies for exemption if: the item is both delivered to and paid for by the customer during the exemption period; or the customer orders and pays for the item and the seller accepts the order during the exemption period for immediate shipment, even if delivery is made after the exemption period. The seller accepts an order when the seller has taken action to fill the order for immediate shipment. Actions to fill an order include placement of an "in date" stamp on a mail order or assignment of an "order number" to a telephone order. An order is for immediate shipment when the customer does not request delayed shipment. An order is for immediate shipment notwithstanding that the shipment may be delayed because of a backlog of orders or because stock is currently unavailable to, or on back order by, the seller.

231.15(3) *Taxable sales.* This exemption does not apply to sales of the following goods or services:

a. Any special clothing or footwear that is primarily designed for athletic activity or protective use and that is not normally worn except when used for the athletic activity or protective use for which it is designed. For example, golf cleats and football pads are primarily designed for athletic activity or protective use and are not normally worn except when used for those purposes; therefore, they do not qualify for the exemption. However, tennis shoes, jogging suits, and swimsuits are commonly worn for purposes other than athletic activity and qualify for the exemption.

b. Accessories, including jewelry, handbags, purses, briefcases, luggage, umbrellas, wallets, watches, and similar items carried on or about the human body, without regard to whether they are worn on the body in a manner characteristic of clothing.

c. The rental of any clothing or footwear. For example, this exemption does not apply to rentals of formal wear, costumes, diapers, and bridal gowns, but would apply to sales of the above items.

d. Taxable services performed on clothing or footwear, such as garment and shoe repair, dry cleaning or laundering, and alteration services. Sales tax is due on alterations to clothing, even though the alteration service may be performed, invoiced and paid for at the same time as the clothing is being purchased. If a customer purchases a pair of pants for $90 and pays $15 to have the pants cuffed, the $90 charge for the pants is exempt, but tax is due on the $15 alteration charge.

e. Purchases of items used to make, alter, or repair clothing or footwear, including fabric, thread, yarn, buttons, snaps, hooks, belt buckles, and zippers.

231.15(4) *Special situations.*

a. Articles normally sold as a unit. Articles that are normally sold as a unit must continue to be sold in that manner if the exemption is to apply; they cannot be priced separately and sold as individual items in order to obtain the exemption. For example, if a pair of shoes sells for $150, the pair cannot be

split in order to sell each shoe for $75 to qualify for the exemption. If a suit is normally priced at $225 and sold as a unit on a single price tag, the suit cannot be split into separate articles so that any of the components may be sold for less than $100 in order to qualify for the exemption. However, components that are normally priced as separate articles (e.g., slacks and sport coats, and suit coats and suit pants sold separately prior to the two-day period) may continue to be sold as separate articles and qualify for the exemption if the price of an article is less than $100.

b. Sales of exempt clothing combined with gifts of taxable merchandise. When exempt clothing is sold in a set that also contains taxable merchandise as a free gift and no additional charge is made for the gift, the exempt clothing may qualify for this exemption. For example, a boxed set may contain a tie and a free tie tack. If the price of the set is the same as the price of the tie sold separately, the item being sold is the tie, which is exempt from tax if sold for less than $100 during the exemption period.

c. Layaway sales. A layaway sale is a transaction in which merchandise is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time and, at the end of the payment period, receives the merchandise. Reference rule 701—16.22(422,423) for general information on layaway sales. A sale of eligible property under a layaway sale qualifies for exemption if: final payment on a layaway order is made by, and the property is given to, the purchaser during the exemption period; or the purchaser selects the property and the retailer accepts the order for the item during the exemption period, for immediate delivery upon full payment, even if delivery is made after the exemption period.

d. Returns. For a 60-day period immediately after the sales tax holiday exemption period, when a customer returns an item that would qualify for the exemption, no credit for or refund of sales tax shall be given unless the customer provides a receipt or invoice that shows tax was paid, or the seller has sufficient documentation to show that tax was paid on the specific item. This 60-day period is set solely for the purpose of designating a time period during which the customer must provide documentation that shows that sales tax was paid on returned merchandise. The 60-day period is not intended to change a seller's policy on the time period during which the seller will accept returns.

e. Different time zones. The time zone of the seller's location determines the authorized time period for a sales tax holiday when the purchaser is located in one time zone and the seller is located in another.

231.15(5) *Calculating taxable and exempt sales price—discounts, coupons, buying at a reduced price, and rebates.*

a. Discounts. A discount allowed by a retailer and taken on a taxable sale can be used to reduce the sales price of an item. If the discount reduces the sales price of an item to $99.99 or less, the item may qualify for the exemption. For example, a customer buys a $150 dress and a $100 blouse from a retailer offering a 10 percent discount. After applying the 10 percent discount, the final sales price of the dress is $135, and the blouse is $90. The dress is taxable (it is over $99.99), and the blouse is exempt (it is less than $99.99). Reference rule 701—15.6(422,423) for a definition of the word "discount" and a description of which retailers' reductions in price are discounts which reduce the taxable sales price of items and which are not.

b. Coupons. When a coupon is issued by a retailer and is actually used to reduce the sales price of any taxable item, the value of the coupon is excludable from the tax as a discount if the retailer is not reimbursed for the coupon amount by a third party. Therefore, a retailer's coupon can be used to reduce the sales price of an item to $99.99 or less in order to qualify for the exemption. For example, if a customer purchases a pair of shoes priced at $110 with a coupon worth $20 off, the final sales price of the shoes is $90, and the shoes qualify for the exemption. A manufacturer's coupon cannot be used to reduce the sales price of an item. Reference 701—subrule 15.6(3).

c. Buy one, get one free or for a reduced price or "two for the price of one" sales. The total price of items advertised as "buy one, get one free," or "buy one, get one for a reduced price," or "two for the price of one" cannot be averaged in order for both items to qualify for the exemption. The following examples illustrate how such sales should be handled.

EXAMPLE 1. A retailer advertises pants as "buy one, get one free." The first pair of pants is priced at $120; the second pair of pants is free. Tax is due on $120. Having advertised that the second pair is free,

the store cannot ring up each pair of pants for $60 in order for the items to qualify for the exemption. However, if the retailer advertises and sells the pants for 50 percent off, selling each pair of $120 pants for $60, each pair of pants qualifies for the exemption.

EXAMPLE 2. A retailer advertises shoes as "buy one pair at the regular price, get a second pair for half price." The first pair of shoes is sold for $100; the second pair is sold for $50 (half price). Tax is due on the $100 shoes, but not on the $50 shoes. Having advertised that the second pair is half price, the store cannot ring up each pair of shoes for $75 in order for the items to qualify for the exemption. However, if the retailer advertises the shoes for 25 percent off, thereby selling each pair of $100 shoes for $75, each pair of shoes qualifies for the exemption.

EXAMPLE 3. A retailer advertises shirts as "buy two for the price of one" for $140. Tax is due on $140. Each shirt cannot be rung up as costing $70. However, as described in Examples 1 and 2 above, the $140 cost of each shirt can be discounted to bring the price of each shirt within the exemption's limitation.

d. Rebates. Rebates occur after the sale and do not affect the sales price of an item purchased. For example, a customer purchases a sweater for $110 and receives a $12 rebate from the manufacturer. The retailer must collect tax on the $110 sales price of the sweater. Reference 701—subrule 15.6(2) for additional information regarding rebates.

e. Shipping and handling charges. Shipping charges separately stated and separately contracted for (reference rule 701—15.13(422,423) for explanation) are not part of the amount used to determine whether the sales price of an item qualifies it for exemption. Handling charges, however, are part of the amount used to make this determination if it is necessary to pay those charges in order to purchase an item.

231.15(6) *Treatment of various transactions associated with sales.*

a. Rain checks. A rain check allows a customer to purchase an item at a certain price at a later time because the particular item was out of stock. Eligible items purchased during the exemption period using a rain check will qualify for the exemption regardless of when the rain check was issued. However, issuance of a rain check during the exemption period will not qualify an eligible item for the exemption if the item is actually purchased after the exemption period.

b. Exchanges.

(1) If a customer purchases an item of eligible clothing or footwear during the exemption period and later exchanges the item for a similar eligible item (different size, different color, etc.), no additional tax will be due even if the exchange is made after the exemption period.

EXAMPLE. A customer purchases a $35 shirt during the exemption period. After the exemption period ends, the customer exchanges the shirt for the same shirt in a different size. Tax is not due on the $35 price of the shirt.

(2) If a customer purchases an item of eligible clothing or footwear during the exemption period and after the exemption period has ended returns the item and receives credit on the purchase of a different item, the appropriate sales tax will apply to the sale of the newly purchased item.

EXAMPLE. A customer purchases a $35 shirt during the exemption period. After the exemption period ends, the customer exchanges the shirt for a $35 jacket. Because the jacket was not purchased during the exemption period, tax is due on the $35 price of the jacket.

(3) If a customer purchases an item of eligible clothing or footwear during the exemption period and later during the exemption period returns the item and purchases a similar but nonexempt item, the purchase of the second item is not exempt from tax.

EXAMPLE. During the exemption period, a customer purchases a $90 dress that qualifies for the exemption. Later, during the exemption period, the customer exchanges the $90 dress for a $150 dress. Tax is due on the $150 dress. The $90 credit from the returned item cannot be used to reduce the sales price of the $150 item to $60 for exemption purposes.

(4) If a customer purchases an item of eligible clothing or footwear before the exemption period and during the exemption period returns the item and receives credit on the purchase of a different item of eligible clothing or footwear, no sales tax is due on the sale of the new item if it is purchased during the exemption period and otherwise meets the qualifications for exemption.

EXAMPLE. Before the exemption period, a customer purchases a $60 dress. Later, during the exemption period, the customer exchanges the $60 dress for a $95 dress. Tax is not due on the $95 dress because it was purchased during the exemption period and otherwise meets the qualifications for the exemption.

231.15(7) *Nonexclusive list of exempt items.* The following is a nonexclusive list of clothing or footwear, sales of which are exempt from tax during the two-day period in August:

Adult diapers
Aerobic clothing
Antique clothing
Aprons—household
Athletic socks
Baby bibs
Baby clothes—generally
Baby diapers
Baseball caps
Bathing suits
Belts with buckles attached
Blouses
Boots— general purpose
Bow ties
Bowling shirts
Bras
Bridal apparel—sold not rented
Camp clothing
Caps—sports and others
Chefs' uniforms
Children's novelty costumes
Choir robes
Clerical garments
Coats
Corsets
Costumes—Halloween, Santa Claus, etc., sold not rented
Coveralls
Cowboy boots
Diapers— cloth and disposable
Dresses
Dress gloves
Dress shoes
Ear muffs
Employee uniforms other than those primarily designed for athletic activity or protective use
Formal clothing—sold not rented
Fur coats and stoles
Galoshes
Garters and garter belts
Girdles
Gloves—cloth, dress and leather
Golf clothing— caps, dresses, shirts and skirts
Graduation caps and gowns—sold not rented
Gym suits and uniforms
Hats
Hiking boots
Hooded (sweat) shirts
Hosiery, including support hosiery
Jackets
Jeans
Jerseys for other than athletic wear
Jogging apparel
Knitted caps or hats
Lab coats
Leather clothing
Leg warmers
Leotards and tights
Lingerie
Men's formal wear—sold not rented
Neckwear, e.g., scarves
Nightgowns and nightshirts
Overshoes
Pajamas
Pants
Pantyhose
Prom dresses
Ponchos
Raincoats and hats
Religious clothing
Riding pants
Robes
Rubber thongs— "flip-flops"
Running shoes without cleats
Safety shoes (adaptable for street wear)
Sandals
Shawls
Shirts
Shoe inserts and laces
Stockings
Suits
Support hose
Suspenders
Sweatshirts
Sweatsuits
Swim trunks
Tennis dresses
Tennis skirts
Ties
Tights
Trousers
Tuxedos (except cufflinks)—sold not rented
Underclothes
Underpants
Undershirts
Uniforms—generally
Veils
Vests—general, for wear with suits
Walking shoes
Windbreakers
Work clothes

231.15(8) *Nonexclusive list of taxable items.* The following is a nonexclusive list of items, sales of which are taxable during the two-day period in August:

Accessories—generally
Alterations of clothing
Athletic supporters
Backpacks
Ballet shoes
Barrettes
Baseball cleats
Baseball gloves
Belt buckles sold without belts
Belts for weight lifting
Belts needing buckles but sold without them
Bicycle shoes with cleats
Billfolds
Blankets
Fabric sales
Fishing boots (waders)
Football pads
Football pants
Football shoes
Goggles
Golf gloves
Ice skates
In-line skates
Insoles
Jewelry
Key cases and chains
Knee pads
Laundry services
Life jackets and vests
Safety clothing
Safety glasses
Safety shoes—not adaptable for street wear
Shoes with cleats or spikes
Shoulder pads for dresses and jackets
Shower caps
Skates—ice and roller
Ski boots, masks, suits and vests
Special protective clothing or footwear not adaptable for streetwear
Sports helmets
Sunglasses— except prescription

Boutonnieres
Bowling shoes—rented and sold
Bracelets
Buttons
Chest protectors
Clothing repair
Coin purses
Corsages
Dry cleaning services
Elbow pads
Employee uniforms primarily designed for athletic activities or protective use
Luggage
Monogramming services
Pads—elbow, knee and shoulder, football and hockey
Patterns
Protective gloves and masks
Purses
Rental of clothing
Rental of shoes or skates
Repair of clothing
Roller blades
Sweatbands— arm, wrist and head
Swim fins, masks and goggles
Tap dance shoes
Thread
Vests—bulletproof
Weight lifting belts
Wrist bands
Yard goods
Yarn
Zippers

This rule is intended to implement 2005 Iowa Code subsection 423.3(67).

701—231.16(423) State sales tax phase-out on energies. Beginning January 1, 2002, the state sales tax is phased out at the rate of 1 percent per year on the sales price from the sale, furnishing, or service of metered natural gas, electricity and fuels, including propane and heating oils, to residential customers for use as energy for residential dwellings, apartment units, and condominiums for human occupancy.

Local option taxes are not included in the phase-out of the state sales tax.

This phase-out of tax does not impact franchise fees. Franchise fees will continue to be imposed where applicable.

231.16(1) *Definitions.* The following definitions are applicable to this rule:

"Energy" means a substance that generates power to operate fixtures or appliances within a residential dwelling or that creates heat or cooling within a residential dwelling.

"Fuel" means a liquid source of energy for a residential dwelling, individual apartment unit, or condominium. "Fuel" includes propane, heating fuel, and kerosene. However, "fuel" does not include blended kerosene used as motor fuel or special fuel.

"Metered gas" means natural gas that is billed based on metered usage to provide energy to a residential dwelling, individual apartment unit, or individual condominium.

"Residential dwelling" means a structure used exclusively for human occupancy. This does not include commercial or agricultural structures, nor does it include nonresidential buildings attached to or detached from a residential dwelling, such as an outbuilding. However, a garage attached to or detached from a dwelling that is used strictly for residential purposes will fall within the phase-out provisions. A building containing apartment units is not considered to be qualifying property for purposes of this rule. However, if each apartment has a separate meter, it may qualify for the phase-out if classified as qualifying property by the utility. Also excluded from the phase-out provisions are certain nonqualifying properties that include, but are not limited to, nursing homes, adult living facilities, assisted living facilities, halfway houses, charitable residential facilities, YMCA residential facilities, YWCA residential facilities, apartment units not individually metered, and group homes.

231.16(2) *Schedule for phase-out of tax.* State sales tax on energies will be phased out at the rate of 1 percent per year based on the following schedule:

a. If the date of the utility billing or meter reading cycle of the residential customer for the sale, furnishing, or service of metered gas and electricity is on or after January 1, 2002, through December 31, 2002, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occur on or after January 1, 2002, through December 31, 2002, the rate of state tax is 4 percent of the sales price.

b. If the date of the utility billing or meter reading cycle of the residential customer for the sale, furnishing, or service of metered gas and electricity is on or after January 1, 2003, through December 31, 2003, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occur on or after January 1, 2003, through December 31, 2003, the rate of state tax is 3 percent of the sales price.

c. If the date of the utility billing or meter reading cycle of the residential customer for the sale, furnishing, or service of metered gas and electricity is on or after January 1, 2004, through December 31, 2004, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occur on or after January 1, 2004, through December 31, 2004, the rate of state tax is 2 percent of the sales price.

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

e. If the date of the utility billing or meter reading cycle of the residential customer for the sale, furnishing, or service 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 occur on or after January 1, 2006, the rate of state tax is 0 percent of the sales price.

231.16(3) *Determination of tax rate.* Determination of the rate of state tax to be imposed on a transaction depends on the type of energy that is being purchased.

a. Electricity or metered natural gas. If the energy being purchased is either electricity or natural gas, then the rate of tax is governed by either the billing date or meter reading date. For example, ABC natural gas company sends out bills with a billing date of December 31, 2002, to qualifying residential customers. However, the bills to these qualifying customers are not placed in the United States mail until January 2, 2003. Based on the foregoing facts, the state sales tax to be imposed on the bills is 4 percent. Four percent is the tax rate imposed at the time of the billing date on the gas bills sent to the customers.

If a billing for the same usage period needs to be billed more than once due to loss of the original bill or some other error, the billing date of the original bill controls qualification for the phase-out provisions of metered gas or electricity. For example, a utility company issues a billing for metered gas on December 28, 2001, to a customer and the customer loses the billing. The customer calls the utility company on January 10, 2002, to report the lost billing and to request a new billing. The utility company issues a new billing with a billing date of January 12, 2002, to the customer. The original billing date issued to the customer is determinative for the tax rate to be imposed. As a result, a 5 percent state tax rate should be imposed on the billing because the original billing date was prior to January 1, 2002.

b. Fuel and heating oil. The proper rate of tax to be imposed for the sale, furnishing or service of fuel including propane is governed by the date of delivery of the fuel to the customer. Consequently, if a farmer purchases propane for home heating by executing an agreement and paying for the propane in October 2002 but the propane is not delivered to the farmer until January 2003, the rate of state sales tax that should be imposed on the transaction is 3 percent.

231.16(4) *Qualifying and nonqualifying usage.* Customers that have both qualifying and nonqualifying usage on the same meter or fuel tank are subject to a proration formula to obtain the qualifying portion eligible for the phase-out provisions. In these situations, the percentage of qualifying usage must be determined by the purchaser for the purposes of applying the phase-out tax. Nonqualifying usage would be subject to the full state tax rate. Consequently, a proration of the metered gas, electricity or fuel usage for the qualifying and the nonqualifying usage must be calculated by the purchaser. Reference 701—subrules 15.3(4) and 15.4(5) for guidance on proration of electricity, natural gas and fuels. In addition, the purchaser must furnish an exemption certificate to the supplier with respect to that percentage of metered gas or electricity that is eligible for the phase-out provisions. Reference 701—subrule 15.3(2). The customer may provide a calculation which includes only the usage not subject to phase-out.

The customer must notify the utility provider of the percentage of qualifying and nonqualifying usage and the customer has the burden of proof regarding the percentage. The customer is liable for any mistakes or misrepresentations made regarding the computation or for failure to notify the utility provider in writing of the percentage of qualifying or nonqualifying usage.

Security lights used by customers that are billed as a flat rate tariff will be subject to the phase-out if the customer is classified as a residential customer. However, if a customer uses security lights which

are billed as a flat rate tariff and that customer is classified as a commercial customer, the sales price including the usage of the security lights is not subject to the phase-out of state sales tax and is subject to the full state sales tax rate, unless another exemption from state sales tax is applicable.

231.16(5) *Reporting over the phase-out period.* Sales/use tax returns will be filed on the same basis as they are currently filed. During each phase-out period, the entire sales price from sales should be reported on the return. The appropriate state sales tax rate for the tax period will be applied by claiming the phased-out portion of the tax rate as a deduction on the return.

The sales prices for local option taxes are also to be reported in their entirety and computed by applying the appropriate local option tax rate.

The following are examples regarding how state sales and local option taxes should be reported:

EXAMPLE 1. Reporting of tax by an energy provider:

Sales price for a tax period in 2002	$100,000
Phase-out (20,000 for the first year, 40,000 for the second year, etc.)	20,000
Taxable sales	80,000
State tax at 5% (to compute state sales tax due)	4,000
Sales price to be reported for local option	100,000
Local option tax rate (assuming a 1% local option tax rate)	× 1%
Local option tax due	1,000
Total tax due (local option and state sales tax)	$5,000

EXAMPLE 2. Reporting of tax on an individual billing:

Monthly charge during a billing or delivery period in 2002	$400
State tax rate	× 4%
State tax due	16
Sales price for local option tax	400
Local option tax rate	× 1%
Local option tax due	4
Total tax (local option and state sales tax)	$20

This rule is intended to implement 2005 Iowa Code section 423.3(68).

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CHAPTERS 232 to 234
Reserved

CHAPTER 235
REBATE OF IOWA SALES TAX PAID

701—235.1(423) Sanctioned automobile racetrack facilities. Effective July 1, 2005, qualifying rebates of Iowa state sales tax may be made to the owner or operator of a sanctioned automobile racetrack facility as defined in this rule for sales occurring on or after January 1, 2006, and ending June 30, 2016. This rebate program should be viewed as a pilot project as a means to increase tourism in the state. Qualifying rebates are for state sales tax only. Local option taxes are not subject to rebate under this program.

235.1(1) *Definitions.* For the purpose of this program, the following definitions apply:

"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 232 acres, in a city with a population of at least 14,500 but not more than 16,500 residents, which city is located in a county with a population of at least 35,000, but not more than 40,000 residents, and where the construction on the racetrack facility commenced not later than one year following July 1, 2005, and the cost of the construction upon completion was at least $35 million.

"Change of control" means any of the following:

1. 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 60 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.

2. 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 50 percent of the voting equity interests of such legal entity or shall otherwise cease to have effective control of such legal entity.

"Iowa corporation" means a corporation incorporated under the laws of Iowa where at least 60 percent of the corporation's equity interests are owned by individuals who are residents of Iowa.

"Owner or operator" means a for-profit legal entity where at least 60 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.

"Population" means the population based upon the 2000 certified federal census.

235.1(2) *Affidavit by owner or operator.* The owner or operator of an automobile racetrack facility seeking 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 must file with the department the following affidavit certifying that qualifications for the rebate have been met:

Iowa Department of Revenue
Sales Tax Rebate Affidavit

NAME OF AFFIANT ADDRESS OF AFFIANT	}	AFFIDAVIT FOR SANCTIONED AUTOMOBILE RACETRACK FACILITY

The undersigned duly swears that the named Automobile Racetrack Facility complies with criteria to be entitled to rebate of sales tax as required in Iowa Code section 423.4 as follows:

a. The facility is sanctioned as an automobile racetrack facility;

b. The sanctioned automobile racetrack facility is located as part of a racetrack and entertainment complex, including any museum attached to or included in the sanctioned automobile racetrack facility, but excluding any restaurant;

c. The sanctioned automobile racetrack facility has not and will not receive any grants under the community attraction and tourism program pursuant to Iowa Code chapter 15F, subchapter II, or the vision Iowa program pursuant to Iowa Code chapter 15F, subchapter III;

d. The sanctioned automobile racetrack facility is located on a maximum of 232 acres of Iowa land;

e. The sanctioned automobile racetrack facility is located in a city with a population, as defined by this rule, of at least 14,500, but not more than 16,500;

f. The city in which the sanctioned automobile racetrack facility is located is in a county with a population, as defined by this rule, of at least 35,000, but no more than 40,000;

g. Construction of the sanctioned automobile racetrack facility was commenced on or before July 1, 2006;

h. Cost of construction of the automobile racetrack facility upon completion is at least $35 million; and

i. There has not been a "change of control" as defined in the rules governing this program regarding the legal ownership or operation of the automobile racetrack facility.

The undersigned duly swears that he or she is the owner or operator of the sanctioned automobile racetrack facility or that the undersigned is the authorized representative of the sanctioned automobile racetrack facility and has the authority to sign this document. The undersigned swears that he or she has personal knowledge regarding the facts contained in this affidavit and that the statements set forth in this affidavit are true and accurate and that the sanctioned automobile racetrack facility has met all of the requirements as contained herein.

_____ _____

Name of Affiant Date

Position of Affiant

235.1(3) *Notification to the department of revenue.* The owner or operator of the automobile racetrack facility will provide the department with the identity of all retailers at the automobile racetrack facility that will be collecting sales tax and are required to keep the information current. The owner or operator of the automobile racetrack facility will notify the department within ten days of the termination of a retailer from collecting sales tax at the racetrack facility. In addition, the owner or operator of the automobile racetrack facility will notify the department within ten days of the startup of a retailer collecting sales tax at the automobile racetrack facility.

235.1(4) *Limitations.* The automobile racetrack facility rebate program applies only to transactions which occur on or after January 1, 2006, but before January 1, 2016, and for which sales tax was collected. Only the state sales tax is subject to rebate. Local option taxes paid and collected are not subject to rebate. Rebates of sales taxes to an automobile racetrack facility are not authorized for transactions which occur on or after the date of the sale or other transfer, whether voluntary or involuntary, 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.

235.1(5) *Termination of rebate program.* The rebate program for automobile racetrack facilities is a pilot program which terminates on the earliest of the following dates:

a. June 30, 2016; or

b. Thirty days following the date on which $12,500,000 in total rebates have been provided; or

c. Thirty days following the date of the sale or other transfer, whether voluntary or involuntary, 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.

235.1(6) *Sourcing of sales.* Advance ticket and admissions sales shall be considered occurring at the automobile racetrack facility regardless of where the transactions actually occur. Consequently, the

state sales tax and any applicable local option tax in effect for the jurisdiction in which the automobile racetrack facility is located must be imposed.

Other types of sales eligible for rebate under this program include, but are not limited to, sales by vendors and sales at concessions, gift shops, and museums. However, sales by a restaurant on facility land are not subject to rebate.

235.1(7) *Requirements to obtain a rebate of state sales tax by the racetrack facility.*

a. The rebate request must be submitted to the department on the authorized department form;

b. The rebate request form must be filed with the department in a timely manner, with the filing requirement being quarterly; and

c. All the information requested on the rebate request form must be completed.

This rule is intended to implement Iowa Code Supplement section 423.4(5) and 2005 Iowa Acts, chapter 110.

[Filed 2/24/06, Notice 1/18/06—published 3/15/06, effective 4/19/06]

CHAPTERS 236 to 239
Reserved

CHAPTER 240
RULES NECESSARY TO IMPLEMENT THE STREAMLINED SALES AND USE TAX AGREEMENT

701—240.1(423) Allowing use of the lowest tax rate within a database area and use of the tax rate for a five-digit area when a nine-digit zip code cannot be used. Any database maintained by the department which displays tax rates and tax jurisdictional boundaries based on either a five-digit or nine-digit zip code system shall, if an area encompassing one zip code has two or more rates of tax, provide to retailers a means of identifying and applying the lowest rate within the area for use in computing tax due. If a nine-digit zip code designation is not available for a street address or if a seller is unable to determine the nine-digit zip code designation of a purchaser after exercising due diligence to determine the designation, the seller may apply the lowest rate for the five-digit zip code area.

This rule is intended to implement 2005 Iowa Code section 423.55.

701—240.2(423) Permissible categories of exemptions.

240.2(1) *Definitions.*

"Entity-based exemption" means an exemption based on who purchases the product or who sells the product.

"Product-based exemption" means an exemption based on the description of the product and not based on who purchases the product or how the purchaser intends to use the product.

"Use-based exemption" means an exemption based on the purchaser's use of the product.

240.2(2) *Product-based exemptions.* Iowa will enact a product-based exemption without restriction only if the agreement does not have a definition for the product or for a term that includes the product. If the agreement has a definition for the product or for a term that includes the product, Iowa will exempt all items included within the definition but will not exempt only part of the items included within the definition unless the agreement sets out the exemption for part of the items as an acceptable variation.

240.2(3) *Entity-based and use-based exemptions.* Iowa will enact an entity-based or a use-based exemption without restriction only if the agreement has no definition for the product whose use or purchase by a specific entity is exempt or for a term that includes the product. If the agreement has a definition for the product whose use or specific purchase is exempt, Iowa will enact an entity-based or a use-based exemption that applies to that product only if the exemption utilizes the agreement's definition of the product. If the agreement does not have a definition for the product whose use or specific purchase is exempt but has a definition for a term that includes the product, Iowa has the power to enact an entity-based or a use-based exemption for the product without restriction.

This rule is intended to implement 2005 Iowa Code chapter 423, subchapter IV.

701—240.3(423) Requirement of uniformity in the filing of returns and remittance of funds. Any model 1, 2, or 3 seller may submit its sales or use tax returns in a simplified format that does not include more data fields than permitted by the governing board. The department will require only one remittance for each return except as otherwise allowed by the agreement. If any additional remittance is required, it will only be required from sellers that have collected more than $30,000 in sales and use taxes in Iowa during the preceding calendar year. The amount of the additional remittance shall be determined through a calculation method rather than actual collections and shall not require the filing of an additional return.

This rule is intended to implement 2005 Iowa Code chapter 423, subchapter IV.

701—240.4(423) Allocation of bad debts. If a seller is entitled under the provisions of 2005 Iowa Code section 423.21 to deduct bad debts owed to it and those bad debts consist of any sales price or purchase price upon which tax has been paid to the state of Iowa as well as a state or states other than Iowa, then allocation of the bad debt is allowed. The seller must support an allocation of the bad debts between Iowa and the other state or states through the proper accounting of its books and records.

This rule is intended to implement 2005 Iowa Code chapter 423, subchapter IV.

701—240.5(423) Purchaser refund procedures. Iowa law allows a purchaser to seek a return of overcollected sales or use taxes from the seller who collected them. See 2005 Iowa Code subsection 423.45(2). In connection with any purchaser's request of a seller that the seller return sales or use tax alleged to have been overcollected, the seller to whom the request is directed shall be rebuttably presumed to have a reasonable business practice if, in the collection of such sales or use tax, the seller uses either a provider or a system, including a proprietary system, which is certified by this state; and has remitted all taxes collected by the use of that provider system to the department, less any deductions, credits, or collection allowances.

This rule is intended to implement 2005 Iowa Code chapter 423, subchapter IV.

701—240.6(423) Relief from liability for reliance on taxability matrix. Iowa provides and maintains a taxability matrix in a database that is in a downloadable format approved by the governing board. All sellers and certified service providers are relieved from liability to Iowa and any jurisdiction imposing a local option tax under Iowa Code chapter 423B or 423E for having charged and collected the incorrect amount of sales or use tax resulting from the seller's or certified service provider's reliance on erroneous data provided by that taxability matrix.

This rule is intended to implement 2005 Iowa Code chapter 423, subchapter IV.

701—240.7(423) Effective dates of taxation rate increases or decreases when certain services are furnished. Certain taxable services are usually furnished over an extended period of time (e.g., utilities, janitorial, and ministorage services), and the user of such a service is billed at regular intervals (e.g., monthly or quarterly). The beginning date when a rate change is imposed on the sales price of this type of service differs, depending upon whether a rate increase or rate decrease is involved. If the rate of taxation has been increased, the beginning date of the rate change shall be the first day of the first billing period occurring after the effective date of the rate increase. If the rate of taxation has been decreased, the beginning date of the rate change shall be the date on which the first bill for furnishing the service is rendered for payment, subsequent to the effective date of the rate decrease.

This rule is intended to implement 2005 Iowa Code chapter 423, subchapter IV.

701—240.8(423) Prospective application of defining "retail sale" to include a lease or rental. The definition of "retail sale" which includes leasing or renting (see 701—Chapter 211) is applied only prospectively from the date of July 1, 2004, and will have no retroactive impact on leases or rentals existing prior to that date. This definition of "retail sale" does not impact any Iowa exemption or exclusion in force prior to July 1, 2004, and applicable to a sale-leaseback transaction, nor does the definition preclude this state from adopting a sale-leaseback exemption or exclusion after July 1, 2004.

This rule is intended to implement 2003 Iowa Acts, First Extraordinary Session, chapter 2, section 205.

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CHAPTER 241
EXCISE TAXES NOT GOVERNED BY THE STREAMLINED SALES AND USE TAX AGREEMENT

701—241.1(423A,423D) Purpose of the chapter. This chapter sets out the excise taxes the collection of which is governed in all aspects by the provisions of Iowa Code chapter 423 except that portion of the chapter which implements the streamlined sales and use tax agreement.

701—241.2(423A,423D) Director's administration. The director of revenue shall administer the excise taxes set out in this chapter as nearly as possible in conjunction with the administration of the state sales and use tax law, except that portion of the law which implements the streamlined sales and use tax agreement. The director shall provide appropriate forms, or provide on the regular state tax forms, for reporting the sale and use of excise tax liability. All moneys received shall be deposited in or all refunds shall be withdrawn from the general fund of the state. The director may require all persons who are engaged in the business of deriving any sales price or purchase price subject to tax under this chapter to register with the department. The director may also require a tax permit applicable only to taxes imposed under this chapter for any retailer not collecting, or any user not paying, taxes under Iowa Code chapter 423.

Iowa Code section 422.25, subsection 4; sections 422.30, 422.67, and 422.68; section 422.69, subsection 1; sections 422.70, 422.71, 422.72, 422.74, and 422.75; section 423.14, subsection 1; and sections 423.23, 423.24, 423.25, 423.31 to 423.35, 423.37 to 423.42, and 423.47, consistent with the provisions of this chapter, apply with respect to the excise taxes authorized under this chapter, in the same manner and with the same effect as if those excise taxes were retail sales taxes within the meaning of those statutes. Notwithstanding this paragraph, the director shall provide for quarterly filing of returns and for other than quarterly filing of returns both as prescribed in Iowa Code section 423.31. All taxes collected under this chapter by a retailer or any user are deemed to be held in trust for the state of Iowa.

DIVISION I
STATE-IMPOSED HOTEL AND MOTEL TAX

701—241.3(423A) Definitions. For the purposes of this division, unless the context otherwise requires:

"Department" means the department of revenue.

"Lessor" means any person engaged in the business of renting lodging to users.

"Lodging" means rooms, apartments, or sleeping quarters in a hotel, motel, inn, public lodging house, rooming house, or manufactured or mobile home which is tangible personal property, or in a tourist court, or in any place where sleeping accommodations are furnished to transient guests for rent, whether with or without meals.

"Person" means the same as the term is defined in rule 701—211.1(423).

"Renting" or *"rent"* means a transfer of possession or control of lodging for a fixed or indeterminate term for consideration and includes any kind of direct or indirect charge for such lodging or its use.

"Sales price" means the amount of consideration for renting of lodging and means the same as the term is defined in rule 701—211.1(423).

"User" means a person to whom lodging is rented.

For the purposes of this division, all other words and phrases used in this chapter and defined in rule 701—211.1(423) have the meaning set forth in that rule.

701—241.4(423A) Imposition of tax. A tax of 5 percent is imposed upon the sales price for the rental of any lodging if the rental occurs in this state. The tax shall be collected by any lessor of lodging from the user of that lodging. The lessor shall add the tax to the sales price of the lodging, and the state-imposed tax, when collected, shall be stated as a distinct item, separate and apart from the sales price of the lodging and the local tax imposed, if any, under Iowa Code section 423A.4.

701—241.5(423A) Exemptions. The tax described in this division shall not apply: (a) when lodging is furnished to a person if that person rents any rooms or facility for more than 31 consecutive days, (b) to the renting of sleeping rooms in dormitories and in memorial unions at all universities and colleges located in the state, (c) to contracts made directly with the federal government, or (d) to the renting of lodging to the guest of a religious institution upon real property exempt from tax as the property of a religious institution, if the reason for renting the room is to provide a place for a religious retreat or function and not a place for transient guests generally.

This division is intended to implement 2005 Iowa Code Supplement chapter 423A.

DIVISION II
EXCISE TAX ON SPECIFIC CONSTRUCTION MACHINERY AND EQUIPMENT

701—241.6(423D) Definitions. For the purposes of this division, unless the context otherwise requires:

"Construction" means new construction, reconstruction, alterations, expansion, or remodeling of real property or structures.

"Contractor" includes contractors, subcontractors, and builders, but not owners.

"Department" means the department of revenue.

"Equipment" means 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.

"Sales price" or *"purchase price"* means the same as these terms are defined in rule 701—211.1(423).

For the purposes of this division, all other words and phrases used in this division and defined in rule 701—211.1(423) have the meaning set forth in that rule.

701—241.7(423D) Tax imposed. A tax of 5 percent is imposed on the sales price or purchase price of all equipment sold or used in the state of Iowa. This tax shall be collected and paid over to the department by any retailer, retailer maintaining a place of business in this state, or user who would be responsible for collection and payment of the tax if it were a sales or use tax imposed under Iowa Code chapter 423.

701—241.8(423D) Exemption. The sales price on the lease or rental of equipment to contractors for direct and primary use in construction is exempt from the tax imposed by this chapter.

This division is intended to implement 2005 Iowa Code Supplement chapter 423D.

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