

TITLE II
EXCISECHAPTER 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—7.8(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 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—7.8(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—7.8(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.

[ARC 0251C, IAB 8/8/12, effective 9/12/12]

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(423) 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 423.35, 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 may 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 may 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 may be required to post a bond or security under the following circumstances:

(1) 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.

(2) 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.

(3) When they have had four or more delinquencies in remitting the sales tax or filing timely deposits or returns during the last 24 months if filing returns on a monthly basis.

(4) When they 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. Return 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 return the bond or security. The department may elect to return the bond without a request from the permit holder.

e. Applying bond. The department may apply a bond to any existing tax liability of the permit holder at its discretion.

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 subrule 11.10(1) 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 423.35.

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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