

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.