

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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