

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.

<u>Filing Status</u>	<u>Statutory Requirement</u>	<u>Test Criteria</u>
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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