

CHAPTER 214
MISCELLANEOUS NONTAXABLE TRANSACTIONS

Rules in this chapter include cross references to provisions in 701—Chapters 16 and 18 that were applicable prior to July 1, 2004.

701—214.1(423) Corporate mergers which do not involve taxable sales of tangible personal property or services. If title to or possession of tangible personal property or ownership of services is transferred from one corporation to another pursuant to a statutory merger, the transfer is not a “sale” in which the sales price is subject to tax if all of the following circumstances exist: (1) the merger is pursuant to statute (for example, Iowa Code section 490.1106); (2) by the terms of that statute, the title or possession of property or services transferred passes from a merging corporation to a surviving corporation and not for any consideration; and (3) the merging corporation is extinguished and dissolved the moment the merger occurs and, as a result of this dissolution, cannot receive any benefit from the merger.

Transactions which are not of the type described above may involve taxable sales. See the following court cases relating to this area: *Nachazel v. Mira Co Mfg.*, 466 N.W.2d 248 (Iowa 1991); *D. Canale & Co v. Celauro*, 765 S.W.2d 736 (Tenn 1989); and *Commissioner of Revenue v. SCA Disposal Services*, 421 N.E.2d 766 (Mass 1981).

EXAMPLE A. Nonaffiliated Corporations A and C enter into a voluntary merger agreement governed by Iowa Code section 490.1106. A and C are separate and independent, one from the other, and neither is a subsidiary of another corporation. No officer of the one is an officer of the other. A and C voluntarily negotiate an arms-length merger agreement which results in the transfer of A’s assets to C and the dissolution of A. In return, A’s stockholders receive stock in C. The sales price of A’s transfer of tangible personal property to merged company C is not subject to sales or use tax.

EXAMPLE B. Corporations B, D, and E are independent entities. They enter into a merger agreement governed by Iowa Code section 490.1106 and agree to merge into one surviving corporation which will (after the dissolution of B and D) be E. They agree that the shares of merging corporations will be converted into shares of E on an equal basis. The sales price of the transfers of property by the corporations which are parties to the merger are not sales subject to Iowa tax.

EXAMPLE C. Corporation F receives all of Corporation G’s outstanding shares from G’s sole stockholder. In return, G’s sole stockholder receives stock from F. After the transaction, Corporation G continues to exist as a subsidiary of Corporation F. This particular transaction involves a trade or barter of the stock shares of F and G. There is a barter of the stocks and thus a “sale” as that term is understood for the purposes of Iowa sales tax law. However, because the sale involves only intangible property (the stock shares), that sale is not taxable. The stock exchange transaction would not prevent taxation of subsequent transfers of tangible personal property or services between F and G.

EXAMPLE D. Corporation H buys all the assets of Corporation I, which include machinery, equipment, finished goods, and raw materials. Corporation H pays cash for these assets. This transaction does involve the sale of tangible personal property, and the sales price of the sale may be subject to Iowa sales tax. However, reference 701—subrule 18.28(2) concerning a casual sale exemption applicable to the liquidation of a business.

This rule is intended to implement Iowa Code section 423.1(46).

701—214.2(423) Sales of prepaid merchandise cards. Sales of prepaid merchandise cards (other than prepaid telephone calling cards (reference 701—subrule 16.51(3))) are not sales of tangible personal property and are not sales the sales price of which is subject to Iowa tax. If a purchaser uses a prepaid merchandise card to purchase taxable tangible personal property or taxable services, sales tax is computed on the sales price at the time of the sale and deducted from the prepaid amount remaining on the merchandise card.

EXAMPLE. Customer A purchases a prepaid merchandise card from ABC Clothing Company in the amount of \$200. Customer A purchases a sweater for \$50 from ABC Clothing Company. ABC Clothing

Company will debit A's card \$52.50 ($\50×1.05) for the state tax rate of 5 percent or \$53 ($\50×1.06) if one local option tax rate of 1 percent is applicable.

This rule is intended to implement Iowa Code sections 423.1(46) and 423.2(1).

701—214.3(423) Demurrage charges. Charges for returning tangible personal property after the agreed-upon date which are true demurrage charges supported by a written agreement do not constitute taxable sales and the charges are exempt from tax.

This rule is intended to implement Iowa Code section 423.1(47).

701—214.4(423) Beverage container deposits. Tax shall not apply to beverage container deposits. This rule is also applicable to all mandatory beverage container deposits required under the provisions of Iowa Code chapter 455C, including deposits on items sold through vending machines.

This rule is intended to implement Iowa Code chapter 455C.

701—214.5(423) Exempt sales by excursion boat licensees. The sales price of the following sales by licensees authorized to operate excursion gambling boats is exempt from Iowa sales and use tax: (1) charges for admission to excursion gambling boats, and (2) the sales price from gambling games authorized by the state racing and gaming commission and conducted on excursion gambling boats.

The sales price from charges other than those for admissions or authorized gambling games would ordinarily be taxable. The following is a nonexclusive list of taxable licensee sales: parking fees, sales of souvenirs, vending machine sales, prepared meals, liquor and other beverage sales, and the sales price from nongambling video games and other types of games which do not involve gambling.

This rule is intended to implement Iowa Code section 99F.10(6).

701—214.6(423) Advertising agencies, commercial artists and designers as an agent or as a nonagent of a client.

214.6(1) In general. A true agency relationship depends upon the facts with respect to each transaction. An agent is one who represents another, called the principal, in dealings with third persons. Advertising agencies, commercial artists, and designers may act as agents on behalf of their clients in dealing with third persons or they may act on their own behalf. To the extent advertising agencies, artists and designers act as agents of their clients in acquiring tangible personal property, they are neither purchasers of the property with respect to the supplier nor sellers of the property with respect to their principals.

When advertising agencies, commercial artists, and designers act as agents of their clients in purchasing property for their clients, the tax applies to the sales price from the sale of such property to the advertising agencies, commercial artists, and designers. Unless such advertising agencies, commercial artists and designers act as true agents, they will be regarded as the retailers of tangible personal property furnished to their clients and the tax will apply to the total sales price received for such property. Further, nothing in this rule should be construed to be in variance with the opinion of the Iowa Supreme Court in *Rowe v. Iowa State Tax Commission*, 249 Iowa 1207, 91 N.W.2d 548 (1958).

To establish that a particular acquisition is made in the capacity of an agent for a client, advertising agencies, commercial artists, and designers (collectively referred to herein as "agency") shall act as follows:

- a. The agency must clearly disclose to the supplier the name of the client for whom the agency is acting as an agent.
- b. The agency must obtain, prior to the acquisition, and retain written evidence of agent status with the client.
- c. The price billed to the client, exclusive of any agency fee, must be the same as the amount paid to the supplier. The agency may make no use of the property for its own account, such as commingling the property of a client with another, and the reimbursement for the property should be separately invoiced or shown separately on the invoice to the client.

Some charges may represent reimbursement for tangible personal property acquired by the agency as agents for its clients and compensation for performing of agency services related thereto. When an advertising agency, commercial artist, or designer establishes that it has acquired tangible personal property as agents for its clients, tax does not apply to the charge made by the agency to its client for reimbursement charges by a supplier or to the charges made for the performance of the agency's services directly related to the acquisition of personal property.

Advertising agencies, commercial artists, and designers acting as agents shall not issue resale certificates to suppliers.

Advertising agencies, commercial artists, and designers act as retailers of all items of tangible personal property produced or fabricated by their own employees when they sell to their clients. Advertising agencies, commercial artists, and designers are not agents of their clients with respect to the acquisition of materials incorporated into items of tangible personal property prepared by their employees and sold at retail to their clients.

214.6(2) Scope. The scope of this rule is not confined simply to advertising agencies, commercial artists and designers, but also applies to all other businesses whose activities would bring them within the scope of this rule (e.g., printers).

This rule is intended to implement Iowa Code sections 423.2 and 423.5.

[Filed 11/16/05, Notice 10/12/05—published 12/7/05, effective 1/11/06]