

CHAPTER 213
MISCELLANEOUS TAXABLE SALES

Rules in this chapter include cross references to provisions in 701—Chapters 15 and 18 that were applicable prior to July 1, 2004.

701—213.1(423) Tax imposed. The Iowa state retail sales tax is imposed at the rate of 5 percent of the sales price from the sale at retail of tangible personal property and certain enumerated services. The rules in this chapter deal with certain specific attributes of the Iowa state retail sales tax, but such rules are by no means exclusive in explaining what are taxable sales and are not exclusive in explaining which transactions constitute taxable sales. There are other transactions which constitute taxable sales under the law and which are not specifically dealt with in these rules.

This rule is intended to implement Iowa Code section 423.2.

701—213.2(423) Athletic events. The sales price from the sale of tickets or admissions to athletic events occurring in the state of Iowa and sponsored by educational institutions, without regard to the use of the proceeds from such sales, shall be subject to tax, except when the events are sponsored by elementary and secondary educational institutions.

This rule is intended to implement Iowa Code section 423.2(3).

701—213.3(423) Conditional sales contracts. Iowa Code section 423.1(46) defines sales to include “conditional sales.” A conditional sale is a sale in which the vendee receives the right to the use of the goods which are the subject matter of the sale, but the transfer of title to the vendee is dependent on the performance of some condition by the vendee, usually the full payment of the purchase price.

Conditional sales in most cases are evidenced by the facts supporting the nature of the vendor’s business, the intent of the parties, and the facts supporting the control over the tangible personal property by the vendee. A conditional sales contract would exist where: the vendee/lessee has total control over the property and is responsible for all losses or damages; the transfer of the property is complete except for title, which passes upon the condition of full payment; and where such full payment is performed under nearly all the vendor’s “lease” agreements, except in cases of default; and the vendor has no intent of retaining control over the property except for purposes of selling it or financing it for sale. In determining whether an agreement constitutes a conditional sale or a true lease, substance shall prevail over form, and the terminology of the written agreement will be considered only to the extent that it accurately represents the true relationship of the parties.

When a conditional sale exists, the seller shall bill the purchaser for the full amount of tax due, and sales tax is due on the full contract price upon delivery of the property which is the subject of the contract. *Harold D. Sturtz v. Iowa Department of Revenue*, 373 N.W.2d 131 (Iowa 1985). No further tax is due on the periodic payments. Interest and finance charges shall not be considered part of the sales price if they are separately stated and reasonable in amount and are, therefore, not subject to tax. *State ex rel. Turner v. Younker Bros., Inc.*, 210 N.W.2d 550, 562 (Iowa 1973).

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

701—213.4(423) The sales price of sales of butane, propane and other like gases in cylinder drums, etc. Sales of butane, propane and other like gases in cylinder drums and other similar containers purchased for cooking, heating and other purposes shall be taxable. However, see rule 701—231.16(423), which provides for a phase-out of and eventual complete exemption from tax for propane and other gases sold for use in residential heating.

When gas of this type is sold and motor vehicle fuel tax is collected by the seller, sales or use tax shall not be due. If Iowa motor vehicle fuel tax is not collected by the seller at the time of the sale, sales or use tax shall be collected and remitted to the department, unless the sale is specifically exempt.

If tax is not collected by the seller at the time of sale, any tax due shall be collected by the department at the time the user of the product makes application for a refund of the motor vehicle fuel tax.

The sales price from the rental of cylinders, drums and other similar containers by the distributor or dealer of the gas shall be subject to tax when the title remains with the dealer. The sales price of gas converter equipment which might be sold to an ultimate consumer shall be subject to tax.

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

701—213.5(423) Antiques, curios, old coins, collector's postage stamps, and currency exchanged for greater than face value. Curios, antiques, art work, coins, collector's postage stamps and such articles sold to or by art collectors, philatelists, numismatists and other persons who purchase or sell such items of tangible personal property for use and not primarily for resale are sales at retail, and their sales price shall be subject to tax.

213.5(1) The sales price of stamps, whether canceled or uncanceled, which are sold by a collector or person engaged in retailing stamps to collectors shall be taxable.

213.5(2) The distinction between stamps which are purchased by a collector and stamps which are purchased for their value as evidence of the privilege of the owner to have certain mail carried by the United States government is that which determines whether or not the sales price of a stamp is taxable or not taxable. A stamp becomes an article of tangible personal property having market value when, because of the demand, it can be sold for a price greater than its face value. On the other hand, when a stamp has only face value, as evidence of the right to certain services or an indication that certain revenue has been paid, its sales price shall not be subject to either sales or use tax.

213.5(3) The sales price from any exchange, transfer, or barter of merchandise for a consideration paid in gold, silver, or other coins or currency shall be subject to tax to the extent of the agreed-upon value of the coins or currency so exchanged. This agreed-upon value constitutes the sales price or purchase price subject to tax. Currency or coins become articles of tangible personal property having a value greater than face value when the currency or coins are exchanged for a price greater than face value. However, when a coin or other currency, in the course of circulation, is exchanged at its face value, the sales price of the sale shall be subject to tax for the face value alone. *Losana Corp. v. Porterfield*, 14 Ohio St.2d 42, 236 N.E.2d 535 (1968).

EXAMPLE 1. Taxpayer operates a furniture store. The taxpayer offers to exchange furniture for silver coins at ten times the face value of any coins dated prior to January 1, 1965. Upon any exchange pursuant to the offer, the value of the coins for purposes of determining the tax on the exchange will be equivalent to the value as agreed upon by the parties, without regard to the face value of the coins.

EXAMPLE 2. Taxpayer operates a hardware store. In the regular course of business, the taxpayer receives silver coins dated prior to January 1, 1965. Taxpayer has received the coins at face value for the sales price and only that value is subject to tax. Also see Attorney General Opinion Griger to Bair, Director of Revenue, May 15, 1980, #80-5-13.

This rule is intended to implement Iowa Code sections 423.1(47), 423.2(1) and 423.5.

701—213.6(423) Communication services furnished by hotel to its guests. As a common practice, hotels in the state of Iowa purchase telephone communication services from telephone companies and furnish those services to the guests of the hotel. The hotel makes a charge for this communication service to its guests in an amount which exceeds the cost of such service to it from the telephone company. Tax shall apply to the entire charge which the hotel makes to its guests for such communication service, regardless of whether a guest's calls are local or long-distance within the state. However, the hotel would purchase any communication service which it furnishes for a charge to a guest exempt from tax as a service purchased for subsequent resale.

This rule is intended to implement Iowa Code section 423.2(2).

701—213.7(423) Consignment sales. When a retailer receives tangible personal property on consignment from others and the consigned merchandise is sold in the ordinary course of business with other merchandise owned or services performed by the retailer, the retailer or consignee shall be making sales at retail. In these cases, the consignee shall file a return and remit tax to the department along with the returns and remittances of tax on the sales price from the sale of other merchandise.

The sales price of sales of tangible personal property by an agent or consignee for another person shall be exempt if the sales meet the requirements of a casual sale or any other exemptions.

This rule is intended to implement Iowa Code section 423.2(1).

701—213.8(423) Electrotypes, types, zinc etchings, halftones, stereotypes, color process plates, wood mounts and art productions. The sales price of electrotypes, types, zinc etchings, halftones, stereotypes, color process plates, wood mounts and art productions shall be subject to tax when sold to users or consumers. Reference rule 701—18.33(422,423) for sales to printers. The listed articles do not become an integral or component part of merchandise intended to be sold ultimately at retail. *Long v. Roberts & Son*, 234 Ala. 570 176 So. 213 (1937); *People ex rel. Walker Engraving Corporation v. Groves*, 268 N.Y. 648, 193 N.E. 539 (1935).

This rule is intended to implement Iowa Code sections 423.2(1) and 423.3(51).

701—213.9(423) Explosives used in mines, quarries and elsewhere. A person engaged in the business of selling explosives to miners, quarries or others shall be subject to sales tax on the sales price from the sale of such property at retail in Iowa. The purchaser shall be liable for use tax upon all purchases for use in Iowa not subject to sales tax. *Linwood Stone Products Company v. State Department of Revenue, Iowa*, 175 N.W.2d 393 (1970).

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

701—213.10(423) Sales on layaway. The sales price from sales on layaway is subject to tax. A layaway sale involves two separate and distinct contracts. Under the first contract, the customer and the retailer enter into an agreement to give the customer an option to purchase a certain item of tangible personal property. Under the second contract, the sale of property takes place. During the period of the option to purchase, the item is placed aside “on layaway” and is not available for sale to the general public. This option to purchase is exercised by the customer’s making one or more “layaway payments.” The customer exercises the option to buy by completing the layaway payments. The last layaway payment is also the tendered payment under the separate contract for sale of the property. The contract for sale is complete when the seller delivers the property to the buyer. See *Holland v. Brown*, 15 Utah 2d 422, 394 P.2d 77 (1964) and *Sturtz v. Iowa Department of Revenue*, 373 N.W.2d 131 (Iowa 1985). Tax must be reported during the period (e.g., the quarter or month) in which delivery under the contract for sale portion of the layaway occurs. This will nearly always be the reporting period in which physical transfer of possession passes from the retailer to the buyer.

A sale on layaway should not be confused with a “conditional sale.” The differences are these: (1) In a conditional sale, physical transfer of property occurs before, rather than after, the buyer makes all periodic payments necessary to purchase the property; and (2) in a conditional sale, physical possession of and title to the property pass to the buyer at different times. In a conditional sales situation, physical possession passes first; then after all periodic payments are made, title (ownership) passes to the buyer. In a layaway sale, both possession and title pass at the same time after all payments are made. The conditional sale is a much more common commercial arrangement than the sale on layaway.

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

701—213.11(423) Memorial stones. Persons engaged in the business of selling memorial stones are selling tangible personal property, the sales price of which shall be subject to tax. When the seller of a memorial stone agrees to erect a stone upon a foundation, the total sales price from such sale shall be taxable. Any separately itemized charge for engraving is part of the taxable sales price of a memorial stone.

The sales price of any designs, lettering or engraving performed on a memorial stone or monument is also subject to tax. See *In Re Des Moines-Winterset Monuments, Inc.*, Docket No. 79-228-6A-DR, March 13, 1980.

This rule is intended to implement Iowa Code section 423.2(1).

701—213.12(423) Creditors and trustees. Pursuant to the provisions of any piece of chattel paper or any other document evidencing a creditor's interest in tangible personal property, the sales price from the sale of tangible personal property at a public auction shall be taxable even if the sale is made by virtue of a court decree of foreclosure by an officer appointed by the court for that purpose.

The tax applies to the sales price of inventory and noninventory goods, provided the owner is in the business of making retail sales of tangible personal property or taxable services. *In Re Hubs Repair Shop, Inc.*, 28 B.R. 858 (Bkrtcy. 1983).

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

701—213.13(423) Sale of pets. A retailer selling pets shall procure a permit and report tax on the sales price from the sale of such pets.

This rule is intended to implement Iowa Code sections 423.1(54) and 423.2(1).

701—213.14(423) Redemption of meal tickets, coupon books and merchandise cards as a taxable sale. When meal tickets, coupon books, or merchandise cards are sold by persons engaged exclusively in selling taxable commodities or services, tax shall be levied at the time such items are redeemed by the customer. Tax shall not be added at the time of actual purchase of the meal ticket, coupon book, or merchandise card. When a retailer sells gift certificates, tax shall be added at the time the gift certificate is redeemed.

This rule is intended to implement Iowa Code sections 423.1 and 423.2.

701—213.15(423) Rental of personal property in connection with the operation of amusements. The sales price from rental of tangible personal property in connection with the operation of amusements shall be taxable. Such rentals shall include all tangible personal property or equipment used by patrons in connection with the operation of commercial amusements, notwithstanding the fact that the rental of such personal property may be billed separately.

This rule is intended to implement Iowa Code section 423.2(1).

701—213.16(423) Repossessed goods. When tangible personal property which has been repossessed either by the original seller or by a finance company is resold to final users or consumers, the sales price from those sales is subject to tax.

A retailer repossessing previously sold merchandise shall be entitled to claim a credit on tax paid for bad debts in the same fashion as any other retailer that has paid tax to the department upon a sales price which ultimately constitutes a bad debt. Reference rule 701—15.4(422,423) for a description of the circumstances under which bad debts are and are not allowed as a credit on tax paid.

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

701—213.17(423) Sales of signs at retail. A person engaged in selling illuminated signs, bulletins, or other stationary signs (whether manufactured by that person or by others) to users or consumers is selling tangible personal property at retail. The sales price shall be taxable, even when the sales price of the sign includes a charge for maintenance or repair service in addition to the charge for the sign.

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

701—213.18(423) Tangible personal property made to order. When a retailer contracts to fabricate items of tangible personal property from materials available in stock or through placing orders for materials which have been selected by customers, all expenses and profits from the sale of such fabricated articles shall be included in the sales price. The retailer shall not deduct fabrication or production charges, even though such charges are separately billed.

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

701—213.19(423) Used or secondhand tangible personal property. The sales price on the sale of used or secondhand tangible personal property in the form of goods, wares, or merchandise shall be

taxable in the same manner as new property. This condition eliminates any consideration for secondhand merchandise to be treated differently than new merchandise when sold at retail for sales tax purposes.

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

701—213.20(423) Carpeting and other floor coverings. The sale of carpeting and other floor coverings to any person constitutes a sale at retail of tangible personal property, and the sales price of these sales is subject to sales or use tax unless the carpeting and other floor coverings are purchased for resale or are otherwise exempt from tax.

The sales price of floor coverings other than carpeting which are shaped to fit a particular room or area and which are attached to the supporting floor with cement, tacks, or by some other method making a permanent attachment with the building or structure are considered to be building materials and shall be taxable in the same manner as building materials which are used or consumed in the performance of a construction contract. See rule 701—219.2(423) and 701—subrule 219.3(3) for tax treatment.

The sale of carpeting is not to be treated as the sale of a “building material.” The sales price of rugs, mats, linoleum, and other types of floor coverings which are not attached but which are simply laid on finished floors and are not considered building materials is subject to tax unless the floor coverings are purchased for resale or are otherwise exempt from tax.

The sale of “carpeting” to owners, contractors, subcontractors or builders is not the sale of a building material, but the sale of ordinary tangible personal property, which can be purchased for resale by owners, contractors, subcontractors or builders. “Carpeting” is any floor covering made of fabric, usually of wool or synthetic fibers. For purposes of this rule, “carpeting” also includes any pads, tack strips, adhesive, and other materials other than subflooring necessary for installation of the carpeting. Sellers of carpeting should charge purchasers sales tax unless the carpeting is purchased for resale or some other exempt purpose, in which case the purchaser must provide the seller with an exemption certificate upon demand.

The sales price of carpeting, with installation, is taxable in the following manner:

1. If separate contracts exist for the sale of the carpeting and for the installation, only the sales price of the carpeting is subject to tax.
2. If the selling price of the carpeting and the installation charge are stated as one charge or lump sum, the entire charge is subject to sales tax.
3. If the invoice itemizes the installation charge separately from the selling price of the carpet, only the selling price of the carpet is subject to sales tax if the installer and the purchaser of the carpet intend that a sale of the carpet shall occur. See 701—subrule 225.4(1) for more information.

In the following examples, assume that contractor A purchases carpeting from supplier B for installation in customer C’s home. Whether or not A will purchase the carpeting from B for A’s own consumption (and thus, A will pay the tax to B) or A will purchase the property from B for resale to C (and thus, C will pay the tax to A) depends upon any contracts existing between A (the contractor) and C (the customer).

EXAMPLE A. A contracts with C to install carpeting in C’s home. Separate contracts exist between A and C for the sale of the carpeting and for its installation. Under these circumstances, A purchases the carpeting from B for resale to C. No tax is due upon the sales price of the transaction between A and B; tax is due upon A’s resale of the carpet to C, but not upon A’s charges for carpet installation, a nontaxable service.

EXAMPLE B. A charges C one lump sum for the carpeting and installation. In this case, A collects sales tax from C on the entire lump sum. The lump sum is treated, for sales tax purposes, as the sales price from the sale of tangible personal property; so A purchases the carpet from B for resale and without tax.

EXAMPLE C. A and C contract for the sale of the carpet separate from its installation. A sends C one invoice for the installation and sale of the carpet with the installation charge listed on the invoice separately from the selling price of the carpet. Under these circumstances, only the selling price of the carpet listed on the invoice is subject to sales tax and A purchases the carpet from B for resale and thus, without obligation to pay sales tax to B.

This rule is intended to implement Iowa Code section 423.2(1) “b.”

701—213.21(423) Goods damaged in transit. If goods shipped by a retailer have been delivered under a contract for sale to a consumer, and thereafter the goods are damaged in the course of transit to the consumer, the retailer and purchaser shall be liable for tax upon the full sale price of the goods, as the sale to the consumer has been completed. *Harold D. Sturtz v. Iowa Department of Revenue*, 373 N.W.2d 131 (Iowa 1985).

If the goods have not been delivered to the consumer, the sale to the consumer has not been completed, and the retailer shall not be taxed for the amount agreed to be paid by the consumer.

EXAMPLE. A company in Chicago transports furniture in its own truck to customer B in Des Moines. Under the contract of sale, delivery of the furniture would occur in Des Moines and sales tax would ordinarily be due upon the sales price of the sale. However, in East Moline, Illinois, the furniture truck is involved in an accident, and B's furniture is destroyed. There was no delivery of the furniture to B, thus no sale to B and thus no sales tax is due. Had the point of delivery been Chicago, Illinois, a sale would have occurred outside this state, but no use tax would be due because B never made any "use" of the furniture in Iowa.

This rule is intended to implement Iowa Code section 423.2.

701—213.22(423) Snowmobiles, motorboats, and certain other vehicles. The sales price of snowmobiles, all-terrain vehicles, dirt bikes, race karts or go-carts, and motorboats shall be subject to tax when purchased and shall not be classified as vehicles subject to registration.

This rule is intended to implement Iowa Code chapter 423.

701—213.23(423) Photographers and photostaters. Tax shall apply to the sales price of photographs and photostat copies, whether or not produced to the special order of the customer, and to charges for the making of photographs or photostat copies out of materials furnished by the customer. A deduction shall not be allowed for the expenses incurred by the photographer, such as rental of equipment or salaries or wages paid to assistants or models, whether or not the expenses are itemized in billings to customers.

Tax shall not apply to the sales price of tangible personal property to photographers and photostat producers which becomes an ingredient or component part of photographs or photostat copies sold, such as mounts, frames and sensitized paper; but tax shall apply to the sales price of materials to photographers or producers which is used in the processing of photographs or photostat copies.

The sales price of photographs by a person engaged in the business of making and selling photographs to newspaper or magazine publishers for reproduction shall be taxable.

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

701—213.24(423) Sale, transfer or exchange of tangible personal property or taxable enumerated services between affiliated corporations.

213.24(1) In general. The sales price of the sale, transfer or exchange of tangible personal property or taxable services among affiliated corporations, including but not limited to a parent corporation to a subsidiary corporation, for a consideration is subject to tax. A bookkeeping entry for an "account payable" qualifies as consideration as well as the actual exchange of money or its equivalent. The sales price of transactions between affiliated corporations may not be subject to tax where it can be shown that the affiliated corporations are operating as a unit within the meaning of Iowa Code sections 423.1(32) and 423.1(46).

213.24(2) Affiliated corporations acting as a unit. If an affiliated corporation acts as an agent for another affiliated corporation in a transaction listed in 213.24(1), the corporations may be considered as acting as a unit. There may not be taxable transactions between the affiliates, but this does not create an exemption for the purchase of tangible personal property or taxable services.

EXAMPLE. Corporation A and Corporation B are affiliated corporations. Corporation A is in the business of negotiation, arbitration, and mediation. Corporation B runs a fleet of taxis. Corporation A acts as Corporation B's agent in negotiating a contract between B and an outside third party C for C to do all of B's vehicle repair at a very favorable price. In spite of a bookkeeping entry listing a sale of the contract for repair from A to B, in securing the contract, the corporations have "acted as a unit," and

the “sale” from A to B is not subject to Iowa tax. However, any payments from A to C or from B to C in return for C’s performance of taxable vehicle repair would be subject to tax, and C must collect Iowa sales tax on the sales price of those services.

This rule should not be equated with the unitary business concept used in corporation income tax law.

This rule is intended to implement Iowa Code sections 423.1(32) and 423.1(46).

701—213.25(423) Urban transit systems. A privately owned urban transit system which is not an instrumentality of federal, state or county government is subject to sales tax on fuel purchases which are within the urban transit system’s charter.

Tax shall not apply to the sales price of fuel purchases made by a privately owned urban transit company for use outside the urban transit system charter in which a fuel tax has been imposed and paid and no refund has been or will be allowed.

Whether an urban transit company will be considered an instrumentality of federal, state or county government for the purpose of receiving sales tax exemption on its fuel purchases, which are also exempted from fuel tax and used for public purposes, depends upon consideration of the following:

1. Whether the urban transit system is created by government.
2. Whether the urban transit system is wholly owned by government.
3. Whether the urban transit system is operated for profit.
4. Whether the urban transit system is primarily engaged in the performance of some essential governmental function.
5. Whether the payment of tax will impose an economic burden upon the corporation, or whether payment of tax serves to materially impair the usefulness or efficiency of the corporation or the payment of tax materially restricts the corporation in the performance of its duties.

The considerations enumerated above are not all-inclusive, and the presence of some considerations and absence of others does not necessarily establish the exemption. *Unemployment compensation of North Carolina v. Wachovia Bank and Trust Company*, 2 S.E.2d 592, 595, 215 No. Car. 491 (1939); 1976 O.A.G. 823, 827, 828.

This rule is intended to implement Iowa Code sections 423.3(1) and 423.3(31).

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