

CHAPTER 288
DETERMINATION OF A SALE AND SALE PRICE

[Prior to 12/17/86, Revenue Department[730]]
[Prior to 11/2/22, see Revenue Department[701] Ch 15]

701—288.1 and **288.2** Reserved.

701—288.3(423) Exemption certificates, direct pay permits, fuel used in processing, and beer and wine wholesalers.

288.3(1) General provision. The sales price from the sale of tangible personal property or specified digital products to a purchaser for any exempt purpose are not subject to tax as provided by the Iowa sales and use tax statutes. In addition, a seller of tangible personal property or specified digital products need not collect Iowa sales or use tax from a purchaser that possesses a valid direct pay permit issued by the department of revenue. However, the following are requirements for the exemption and noncollection of tax by a seller when a direct pay permit is involved:

a. The sales tax liability for all sales of tangible personal property, specified digital products, and taxable services is upon the seller and the purchaser unless the seller takes from the purchaser a valid exemption certificate stating under penalty of perjury that the purchase is for a nontaxable purpose and is not a retail sale, or the seller is not obligated to collect tax due, or unless the seller takes a fuel exemption certificate. If the tangible personal property, specified digital products, or services are purchased tax-free pursuant to a valid exemption certificate and the tangible personal property, specified digital products, or services are used or disposed of by the purchaser in a nonexempt manner, the purchaser is solely liable for the taxes and shall remit the taxes directly to the department. The protection afforded a seller by this paragraph does not apply to a seller who fraudulently fails to collect tax or to a seller who solicits purchasers to participate in the unlawful claiming of an exemption.

b. The director is required to provide exemption certificates to assist retailers in properly accounting for nontaxable sales of tangible personal property, specified digital products, or services to buyers for exempt purposes. These exemption certificates must be completed as to the information required on the form in order to be valid.

288.3(2) Retailer-provided exemption certificates. Retailers may provide their own exemption certificates. Those exemption certificates must contain information required by the department, including, but not limited to: the seller's name, the buyer's name and address, the buyer's nature of business (wholesaler, retailer, manufacturer, lessor, other), the reason for purchasing tax-exempt (e.g., resale or processing), the general description of the products purchased, and state sales tax or I.D. registration number. The certificate must be signed and dated by the buyer.

a. An exemption certificate or blanket exemption certificate as referred to in paragraph "b" cannot be used to make a tax-free purchase of any tangible personal property, specified digital products, or service not covered by the certificate. For example, the certificate used to purchase a chemical consumed in processing cannot be used to purchase a generator which is going to become an integral part of other tangible personal property which will be ultimately sold at retail.

b. Any person repeatedly selling the same type of property or service to the same purchaser for resale, processing, or for any other exempt purpose may accept a blanket certificate covering more than one transaction. A seller who accepts a blanket certificate is required periodically to inquire of the purchaser to determine if the information on the blanket certificate is accurate and complete. Such an inquiry by the seller shall be deemed evidence of good faith on the part of the seller.

c. When due to extraordinary circumstances in the nature of fire, flood, or other cases of destruction beyond the taxpayer's control, a seller does not have an exemption certificate on file, the seller may show by other evidence, such as a signed affidavit by the purchaser, that the property or service was purchased for an exempt purpose.

d. The liability for the tax does not shift from the seller to the purchaser if the seller has not accepted a valid exemption certificate in good faith. If the seller has actual knowledge of information or circumstances indicating that it is unlikely that the property or services will be used by the purchaser in an exempt manner, then in order to act in good faith the seller must make further inquiry to determine the

facts supporting the exemption certificate. In addition, if the nature of the business of the purchaser, as shown by the exemption certificate, indicates that it is unlikely that the property or services will be used in an exempt manner, then in order to act in good faith the seller must make further inquiry to determine the facts supporting the exemption certificate.

EXAMPLE 1. A seller is expected to inquire to discover the facts supporting the claimed exemption if the seller knows that the property or services will not be, or it is unlikely that the property or services will be, resold or used in processing by that purchaser. This further inquiry is expected even when there is nothing in the nature of the business as shown on the valid exemption certificate to cause the seller to make further inquiry.

EXAMPLE 2. A seller is expected to inquire to discover the facts supporting the claimed exemption of the sale of sawdust or a tool chest purchased by a gas station since such items are rarely resold by a gas station.

EXAMPLE 3. A seller is not expected to make further inquiry, in the absence of actual knowledge, to determine which light bulbs bought by a hardware store are for use in the store or those purchased for resale.

If the seller has met the requirements set forth above in accepting a valid exemption certificate, the seller shall be deemed to have acted in good faith and the liability for the tax shifts to the purchaser who becomes solely liable for the taxes.

e. A seller is relieved from liability for sales tax if (1) a purchaser deletes the tax reimbursement from the payment to the seller or if the purchaser makes a notation on an invoice such as “not subject to tax” or “resale” and (2) if the seller can produce written evidence to show that an attempt was made to obtain an exemption certificate to show that the transaction was exempt from tax but was unable to obtain said certificate from the purchaser.

f. The failure of a permit holder to act in good faith while giving or receiving exemption certificates may result in the revocation of the sales tax permit. Revocation is authorized under the provisions of Iowa Code section 423.36.

g. The purchase of tangible personal property, specified digital products, or services which are specifically exempt from tax under the Iowa Code need not be evidenced by an exemption certificate. However, if certificates are given to support these transactions, they do not relieve the seller of the responsibility for tax if at some later time the transaction is determined to be taxable.

h. A person who is selling tangible personal property, specified digital products, or services, but who is not making taxable sales at retail, shall not be required to hold a permit. When this person purchases tangible personal property, specified digital products, or services for resale, the person shall furnish a certificate in accordance with these rules to the supplier stating that the property or services was purchased for the purpose of resale.

i. For information regarding the use of exemption certificates for contractors, see 701—Chapter 19.

288.3(3) *Fuel exemption certificates.*

a. Definitions.

“*Fuel*” includes, but is not limited to, heat, steam, electricity, gas, water, or any other tangible personal property consumed in creating heat, power, or steam.

“*Fuel consumed in processing*” includes fuel used in grain drying or providing heat or cooling for livestock buildings, fuel used for generating electric current, fuel consumed in implements of husbandry engaged in agricultural production, as well as fuel used in “processing” as defined in rules 701—18.29(423) and 701—230.15(423). See rule 701—17.2(423) for a detailed description of “fuel used in processing.” See rule 701—17.3(423) for extensive discussion regarding electricity and steam used in processing.

“*Fuel exemption certificate*” is a certificate given by a purchaser and signed under penalty of perjury to assist a seller in properly accounting for nontaxable sales of fuel consumed in processing. The fuel exemption certificate must contain information required by the department, including, but not limited to: the seller’s name and address; the purchaser’s name and address; the type of fuel purchased, e.g., electricity, propane; a description of the purchaser’s business, e.g., farmer, manufacturer of

steel products, food processor; a general description of the type of processing in which the fuel is consumed, e.g., grain drying, raising livestock, generating electricity, or manufacture of tangible personal property; and the percentage exemption claimed. The fuel exemption certificate must be signed under penalty of perjury by the purchaser and dated. The seller may demand from the purchaser additional documentation attached to the fuel exemption certificate which is reasonably necessary to support the claim of exemption for fuel consumed in processing. In the absence of separate metering, documentation reasonably necessary to support a claim for exemption will consist of either an electrical consultant's survey or of a document prepared by the purchaser in accordance with the requirements of subrule 15.3(4). Attachment of documentation is not necessary if the purchaser has furnished the seller with documentation when filing an earlier exemption certificate and a substantial change in the purchaser's operation had not occurred since the documentation was furnished or if fuel consumed by the purchaser in processing is separately metered and billed by the seller.

"Substantial change" means a change in the purchaser's use or disposition of tangible personal property and services such that the purchaser pays less than 90 percent of the purchaser's actual sales tax liability.

b. If fuel is purchased tax-free pursuant to a fuel exemption certificate which has been accepted by the seller and the purchaser uses or disposes of the fuel in a nonexempt manner, the purchaser is solely liable for sales tax and shall remit that tax directly to the department. A seller can, however, rely upon a fuel exemption certificate for sales occurring within five years subsequent to the date of the certificate only. For later sales, the seller must secure a new certificate of exemption from the purchaser.

c. A purchaser may apply to the department for review of any fuel exemption certificate. The department shall review the certificate and determine the correct amount of exemption within 12 months from the date of application. The department shall notify a purchaser of any determination that is different from the purchaser's claim of exemption. Failure to determine the correct amount of exemption within 12 months from the date of application shall constitute a determination on the department's part that the claim of exemption on the fuel certificate is correct as submitted. A determination regarding an exemption certificate is final unless the purchaser appeals to the director for a revision of the determination within 60 days from the date of the notice of determination. The director shall grant a hearing and upon the hearing, the director shall determine the correct exemption and notify the purchaser of the decision by mail. The decision is final unless the purchaser seeks judicial review of the director's decision under Iowa Code section 422.55 within 60 days from the date of the notice of the director's decision. The purchaser must notify the seller of any change in percentage.

d. The effective date of the legislation allowing use of an exemption certificate for fuel used in processing is January 1, 1988. However, a certificate which is complete and correct according to subrule 15.3(3), paragraph *"a,"* and any other requirement of the director, which is signed and dated prior to January 1, 1988, shall, if accepted by a seller in good faith, protect the seller to the extent described in subrule 15.3(3), paragraph *"b,"* for energy consumed on or after January 1, 1988. Exemption certificates filed with the seller prior to January 1, 1988, also expire five years from date of acceptance.

288.3(4) Determining percentage of electricity used in processing. When electricity is purchased for consumption both for processing and for taxable uses, and the use of the electricity is recorded on a single meter, the purchaser must allocate the use of the electricity according to taxable and nontaxable consumption if an exemption for nontaxable use is to be claimed. The calculations which support the allocation, if properly performed, can serve as the documentation reasonably necessary to support a claim of exemption for fuel used in processing. The following method with its alternative table may be used to determine the percentage of electricity used on the farm or in a factory which is exempt by virtue of its being used in processing. See subrule 15.3(4), paragraph *"e,"* for alternative methods of computing exempt use, including exempt use by a new business. First, the base period for the calculations must be selected.

a. Ordinarily, the 12 months previous to the date upon which the exemption is calculated are used as the base period for determining the percentage of electricity exempt as used in processing. This immediately previous 12-month period is used because it is a span of time which is (1) recent enough to accurately reflect future electric usage; (2) extended enough to take into account variations in electrical

usage resulting from changes in temperature occurring with the seasons; and (3) is not so long as to require unduly burdensome calculations. However, individual circumstances can dictate that a shorter or longer period than 12 months will be used or that some 12-month period other than that immediately previous to the date upon which the exemption certificate is filed, will be used.

EXAMPLE: Mr. Wilson is a farmer. He files an exemption certificate for the period beginning January 1, 1990. The year 1989 is one with a very mild winter, a relatively cool summer, and a very dry autumn. Mr. Wilson uses no electricity for grain drying and substantially less electricity than usual for heating and cooling his livestock buildings. Mr. Wilson must use a 12-month period which is more representative of his usual exempt electrical consumption than that of January through December 1989.

EXAMPLE: Mr. Jackson is also a farmer. He files an exemption certificate for the period beginning January 1, 1991. The year 1990 is one in which the summer is extraordinarily hot, the winter exceedingly cold, and the autumn very wet. Mr. Jackson uses far more electricity than normal to dry his grain and heat and cool his livestock buildings. He should use a 12-month period more representative of his customary exempt use of electricity than the period January through December 1990.

EXAMPLE: Company A manufactures its product in a factory which has no windows and is heavily insulated. The factory always runs 40 hours per week, 52 weeks per year. Because of these and other circumstances, Company A's electrical usage does not vary significantly from month to month, and it is easy enough to document this. Company A can calculate its percentage of exempt use of electricity based on a one-month, rather than a 12-month, period.

EXAMPLE: Company B manufactures widgets. The "economic cycle" for widget production is, on the average, 36 months long. During this economic cycle, there are times when, for months at a time, the factory will operate three shifts. At other times, for weeks at a time, the entire factory will be shut down and its personnel laid off. The only accurate way to determine exempt percentage of electricity used is to calculate electrical use over the entire economic cycle. Therefore, 36 months, rather than 12 months, would be the base period.

b. Calculating kilowatts used per hour by various electrical devices. The first step in computing percentage of exemption is to determine the number of kilowatts used per hour for each device in farm or factory. If kilowatts consumed per hour of a device's use is not listed on the device or otherwise readily obtainable, formulas can be used to determine this information.

Lights

For incandescent bulbs, add rated wattages and divide by 1,000. For fluorescent lights, add rated wattages plus an additional 20 percent of rated wattages, then divide by 1,000.

Incandescent Lights:

$$\frac{\text{Watts}}{1,000} = \text{Kilowatts Per Hour}$$

Fluorescent and Other High Intensity Lights:

$$\frac{\text{Watts} + .20 (\text{Watts})}{1,000} = \text{Kilowatts Per Hour}$$

Devices Other Than Lights

For these devices, use the wattage rating given by the manufacturer and divide by 1,000 to obtain approximate kilowatts used per hour of operation.

$$\frac{\text{Watts}}{1,000} = \text{Kilowatts Per Hour}$$

If an appliance does not list a watt rating, tables provided by Iowa State University Cooperative Extension Service can be used especially by farmers who are attempting to compute their exempt percentage of electricity used. Persons using a table are reminded to convert watts to kilowatts before proceeding to further calculations.

c. The average number of kilowatts consumed per hour of operation for any one device must next be multiplied by the total number of hours which the device is operated during the base period. A person may use intermediate calculations. For example, assume that a machine used in processing consumes 20 kilowatts per hour of operation. The machine is operated, during a 12-month base period, 40 hours per week during 50 weeks. The machine is not placed in operation when the factory is closed for two weeks vacation. Exempt use is calculated as follows:

$$\frac{\text{Kilowatts Per Hour}}{20} \times \frac{\text{Hours Operated Per Week}}{40} \times \frac{\text{Weeks Operated in 12-Month Period Equals Number of Exempt Kilowatt Hours}}{50 = 40000}$$

Assume that a grain dryer uses 30 kilowatts per hour of operation. During a 12-month base period, the grain dryer is used in processing 200 hours per month, for 3 months. The calculation for total number of kilowatt hours of exempt use for the 12-month period is as follows:

$$\frac{\text{Kilowatts Per Hour}}{30} \times \frac{\text{Hours of Exempt Use Per Month}}{200} \times \frac{\text{Number of Months of Exempt Use Equals Total Number of Exempt Kilowatt Hours}}{3 = 18000}$$

d. The following is a very simplified example of a worksheet for determining the percentage of electricity qualifying for exemption when a single meter records both exempt and taxable use.

| | Kilowatts Per Hour of Operation | Average Hours of Operation Per 12-Month Base Period | Average Kilowatt Hours Per 12-Month Base Period | Total |
|----------------------------|---------------------------------|---|---|------------------|
| All Exempt Usage | | | | |
| Production Machine #1 | 10 | 1000 | 10000 | |
| Production Machine #2 | 10 | 1000 | 10000 | |
| Other | 10 | 1000 | 10000 | |
| Total Exempt Usage | | | | 30000(A) |
| All Taxable Usage | | | | |
| Air Conditioners | 10 | 3000 | 30000 | |
| General Lighting | 10 | 3000 | 30000 | |
| Office Equipment | 10 | 3000 | 30000 | |
| Space Heaters | 10 | 3000 | 30000 | |
| Other | 10 | 3000 | 30000 | |
| Total Taxable Usage | | | | 150000(B) |
| Total—All Usages | | | | 180000(C) |

$$\frac{30000}{180000} \text{ or } \frac{A}{C} = \text{Percentage of Electricity Purchase Qualifying for Exemption} = 16.60\%$$

The number actually used in the base period can be determined by reference to billings for the base period. If the number of kilowatt hours calculated to have been used does not approximate the number actually used in the base period, the calculations are deficient and should be performed again. Once the precise percentage of exemption has been calculated, that percentage must be applied during any period for which a purchaser is requesting exemption. Any substantial and permanent change in the amount of electricity consumed or in the proportion of exempt and nonexempt use of electricity is an occasion for recomputing the exempt percentage and for filing a new exemption certificate.

e. The following are nonexclusive alternatives to the above method of determining the percentage of electricity which is exempt because it is used in processing. First, if currently only one meter exists to measure both exempt and nonexempt use of electricity, the most accurate method of determining exempt and nonexempt use may be separate metering of these two uses. This possibility is especially practical if all exempt use results from the activities of one machine, however large. If separate metering is impossible or impractical, it may be useful to employ the services of an energy consultant. If using energy consultant's service is impractical, it may be possible to secure, from the manufacturer of a machine used in processing, the number of kilowatts which a machine uses per hour of operation. Often, these manufacturer's studies give a more accurate measure of a machine's use of electricity than the formulas set out in paragraph 15.3(4) "b" above. This circumstance is especially true with regard to large electric motors.

If a business is new, and no historical data exists for use in calculating exempt and nonexempt percentages of electricity or other fuel consumed, any person calculating future exempt use must make the best projections possible. If calculating future exempt use with no past historical data to serve as a basis for the calculations, it is suggested that conservative estimates of exempt use be made. Using these conservative estimates can avoid future liability for sales tax on the part of the purchaser of the electricity. Possibly, in calculating exempt use of fuel for a new business, historical data from existing similar businesses can be used if available from persons not in direct competition to the person claiming the exemption.

Ordinarily any method of determining the percentage of electricity used in processing will involve calculating both exempt and nonexempt usage. However, in certain instances it is acceptable to calculate only exempt or nonexempt usage in one column and to list separately the equipment or devices making the exempt or nonexempt use of the electricity separate. This practice can normally be followed where electrical usage does not fluctuate dramatically and where usage is either predominantly exempt or predominantly not exempt.

288.3(5) *Applicability.* The provisions of subrule 15.3(4) explaining the determination of the percentage exemption for electricity also apply to other types of fuel such as natural gas, LP, etc., when used for exempt purposes.

288.3(6) *Special certificates of beer and wine wholesalers.* Beer or wine purchased from a wholesaler holding a Class A or F permit has been purchased for resale if the purchaser provides the wholesaler with a retail beer or wine permit or liquor license number. A wholesaler's record of account with an individual retailer is a complete and correct exemption certificate for the purposes of beer or wine sales and provides all the protection which the usual exemption certificate (see subrule 15.3(2)) provides if the record of account contains the retailer's beer or wine permit or liquor license number and all other information concerning the account is taken in good faith by the wholesaler. The words "beer," "permit," "retailer," "wholesaler," and "wine" have the same definitions for the purposes of this rule as the definitions given them in Iowa Code section 123.3.

This rule is intended to implement Iowa Code sections 423.3, 423.36 and 423.45.
[ARC 2349C, IAB 1/6/16, effective 2/10/16; see Rescission note at end of chapter; ARC 2768C, IAB 10/12/16, effective 11/16/16; ARC 5915C, IAB 9/22/21, effective 10/27/21; Editorial change: IAC Supplement 11/2/22]

701—288.4 to 288.7 Reserved.

701—288.8(423) Returned merchandise. When merchandise is sold and returned by a customer who secures an allowance or a return of the full purchase price, the seller may deduct the amount allowed as

full credit or refund, provided the merchandise is taxable merchandise and tax has been previously paid on the sales price.

An allowance shall not be made for the return of any merchandise which (1) is exempt from either sales or use tax; or (2) has not been reported in the taxpayer's tax previously paid.

This rule is intended to implement Iowa Code section 423.31.
[ARC 5915C, IAB 9/22/21, effective 10/27/21; Editorial change: IAC Supplement 11/2/22]

701—288.9 and 288.10 Reserved.

701—288.11(423) Leased departments. When a permit holder leases a part of the premises where the permit holder's retail business is conducted, the lessor shall immediately notify the department and supply the following information: (1) name and home office address of the lessee; (2) type of merchandise sold by the lessee or service performed; (3) date when the lessee began making sales or performing services at retail in Iowa on the leased premises; and (4) whether the lessee has secured a permit to account directly to the department for tax due or if the lessee's sales will be accounted for in the lessor's tax return. Upon request, the department shall furnish a form to the lessor on which to report this information.

If the lessor fails to notify the department that a part of the premises has been leased and does not furnish the requested information, the lessor shall be responsible for tax due as a result of sales by the lessee, unless the lessee has properly remitted the tax due.

The lessor who has leased a part of the premises shall report to the department the names and addresses of all lessees. If the lessor is accounting for the lessee's sales, the lessor shall, after the name of each lessee, show the amount of net taxable sales made by the lessee and which net taxable sales are included in the lessor's return. If the lessee is reporting the tax directly to the department, the lessor shall show the permit number of the lessee.

When the lessee has terminated selling activities, the lessor shall immediately notify the department.

This rule is intended to implement Iowa Code section 423.25.
[ARC 5915C, IAB 9/22/21, effective 10/27/21; Editorial change: IAC Supplement 11/2/22]

701—288.12(423) Excise tax included in and excluded from gross receipts.

288.12(1) An excise tax which is not an Iowa sales or use tax may be excluded from the gross receipts or purchase price of the sale or use of property or taxable services only if all of the following conditions exist:

a. The excise tax is imposed upon the identical sale which the Iowa sales tax is imposed upon or upon the sale which measures the taxable use or upon a use identical to the Iowa taxable use and not upon some event or activity which precedes or occurs after the sale or use.

b. The legal incidence of the excise tax falls upon the purchaser who is responsible for payment of the Iowa sales tax. The purchaser must be obligated to pay the excise tax either directly to the government in question or to another person (e.g., the retailer) who acts as a collector of the tax. See *Gurley v. Rhoden*, 421 U.S. 200, 95 S. Ct. 1605, 44 L.Ed.2d 110 (1975) for a description of the circumstances under which the legal, as opposed to the economic, burden of an excise tax falls upon the purchaser.

c. The name of the tax is specifically stated and the amount of the tax separately set out on the invoice, bill of sale, or upon another document which embodies a record of the sale.

EXAMPLE 1. The federal government imposes an excise tax upon the act of manufacturing tangible personal property within the United States. The amount of the tax is measured as a percentage of the price for the first sale of the property, which is usually to a wholesaler. However, one particular manufacturer sells its manufactured goods at retail in Iowa. Even if this tax meets the requirements for exclusion of paragraphs "b" and "c" above, it is not excludable because it does not meet the requirements of paragraph "a." The tax is not imposed upon the act of sale but upon the prior act of manufacture. The tax is merely measured by the amount of the proceeds of the sale.

EXAMPLE 2. The federal government imposes an excise tax of 4 percent on a retailer's gross receipts from sales of tangible personal property. The law allows the retailer to separately identify and bill a customer for the tax. However, if a retailer fails to pay the tax, the government cannot collect it from

a purchaser and if the government assesses tax against the retailer and secures a judgment requiring the retailer to pay the tax, the retailer who has failed to collect the tax from a purchaser on the initial sale has no right of reimbursement from the purchaser. This tax is not excludable from Iowa excise tax. Its economic burden falls upon the purchaser. However, since neither the government nor the retailer has any legal right to demand payment of the tax from a purchaser, the legal incidence of the tax is not upon the purchaser; and the tax would not meet the requirements of paragraph “b” above.

288.12(2) As of January 1, 1988, the following federal excise taxes are includable in the gross receipts of Iowa sales tax:

a. The federal gallonage taxes on distilled spirits, wines, and beer imposed by 26 U.S.C. Sections 5001, 5041, and 5051.

b. The tax imposed by 26 U.S.C. Section 5701 with regard to cigars, cigarettes, and cigarette papers and tubes.

c. The federal tax on gasoline imposed under 26 U.S.C. Section 4081.

d. The federal tax on tires, inner tubes, and tread rubber imposed by 26 U.S.C. Section 4071.

e. The federal manufacturer’s excise tax imposed by 26 U.S.C. Section 4061 has been repealed.

288.12(3) The following excise taxes are excluded from the amount of gross receipts:

a. The federal tax imposed by 26 U.S.C. Section 4251(a) on the communication services of local telephone service, toll telephone service, and teletypewriter exchange service.

b. The federal tax imposed by 26 U.S.C. Section 4051 upon the first retail sale of automobile and truck chassis and bodies; truck trailer and semitrailer chassis and bodies and tractors of the kind chiefly used for highway transportation in combination with trailers or semitrailers.

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

[ARC 5915C, IAB 9/22/21, effective 10/27/21; Editorial change: IAC Supplement 11/2/22]

701—288.13(423) Freight, other transportation charges, and exclusions from the exemption applicable to these services. The determination of whether freight and other transportation charges shall be subject to sales or use tax is dependent upon the terms of the sale agreement.

288.13(1) Charges separately stated. When tangible personal property or a taxable service is sold at retail in Iowa or purchased for use in Iowa and under the terms of the sale agreement the seller is to deliver the property to the buyer or the purchaser is responsible for delivery and such delivery charges are stated and agreed to in the sale agreement or the charges are separate from the sale agreement, the sales price of the freight or transportation charges shall not be subject to tax. This exemption does not apply to the service of transporting electrical energy or the service of transporting natural gas.

288.13(2) Charges not separately stated. When freight and other transportation charges are not separately stated in the sale agreement or are not separately sold, the sales price of the freight or transportation charges become a part of the sales price of the sale of tangible personal property or a taxable service and are subject to tax. Where a sales agreement exists, the freight and other transportation charges are subject to tax unless the freight and other transportation charges are separately contracted. If the written contract contains no provisions separately itemizing such charge, tax is due on the full contract price with no deduction for transportation charge, regardless of whether or not such transportation charges are itemized separately on the invoice.

288.13(3) Exemption. The sales price from charges for delivery of electricity or natural gas are exempt from tax to the extent that the sales price from the sale, furnishing, or service of electricity or natural gas or its use are exempt from sales or use tax under Iowa Code chapter 423. The exclusions from this exemption relating to the transportation of natural gas and electricity are applicable to all contracts for the performance of these transportation services. Below are examples which explain some of the principal circumstances in which the transport of natural gas or electricity is a service subject to tax.

Freight and transportation charges include, but are not limited to, the following charges or fees: freight; transportation; shipping; delivery; or trip charges.

EXAMPLE 1. Consumer ABC, located in Des Moines, contracts with supplier DEF, located in Waterloo, for DEF to sell gas and electricity to ABC. ABC then contracts with utility GHI to transport the energy over GHI’s network (of pipes or wires) from Waterloo to ABC’s facility in Des Moines.

GHI's transport of ABC's energy is a taxable service. The transportation of natural gas and electricity by a utility is a taxable service of furnishing natural gas or electricity whether or not that utility or some other utility produces the natural gas or generates the electricity furnished. A utility's transportation of gas or electricity is a "transportation service" specifically excluded from the exemption in Iowa Code section 423.3(70).

EXAMPLE 2. Consumer ABC contracts with utility DEF for DEF to provide electricity from DEF's generating plant in Mason City to ABC's location in Cedar Rapids. Transport of the electricity is by way of DEF's network of long distance transmission lines. The contract between ABC and DEF states the prices to be paid for the purchase of various amounts of electricity and also sets out the amounts to be paid for transport of electricity and constitutes separate sales of electricity and transportation services. In these circumstances, amounts which ABC pays DEF for transport of the electricity are taxable.

EXAMPLE 3. As in Example 2, consumer ABC contracts with utility DEF for the delivery of electricity from DEF's generating plant in Mason City to ABC's location in Cedar Rapids, ownership of the electricity to pass to ABC in Cedar Rapids. Also, as in Example 2, the contract between ABC and DEF states varying prices to be paid for the purchase and transportation of varying amounts of electricity and constitutes separate sales of electricity and transportation services. Transport of the electricity will be by way of GHI's transmission lines. DEF contracts with GHI for the transport of the electricity to ABC's plant in Cedar Rapids. At the time the contract is signed, GHI asks DEF for an exemption certificate stating that DEF will resell GHI's transportation service to ABC. GHI must either secure the certificate or collect Iowa sales tax from DEF. GHI is furnishing a taxable electricity transportation service to DEF, which DEF will in turn furnish to ABC. DEF must collect tax from ABC.

EXAMPLE 4. In this example, the same contract exists between ABC and DEF as exists in Example 3. However, in this example, a breakdown at DEF's plant in Mason City prevents DEF from generating the electricity which it is contractually obligated to provide to ABC. DEF is forced to purchase both electricity and its transport from JKL. The contract between DEF and JKL states the prices to be paid for the purchase of various amounts of electricity and also sets out the amounts to be paid for the transport of this electricity and constitutes separate sales of electricity and transportation services. JKL asks DEF for an exemption certificate stating that DEF has purchased the electricity and its transport for resale to ABC. In this case, JKL must secure an exemption certificate from DEF to avoid collecting tax on its sale and transport of the electricity for DEF.

EXAMPLE 5. Again, ABC and DEF have contracted, as they did in Example 2, for DEF to sell and transport electricity from Mason City to Cedar Rapids. However, their agreement mentions only one combined price for sale and delivery of the electricity. There is no separately contracted price for transport of the electricity, in contrast to the situation in Example 2. In this case, the entire amount which ABC pays to DEF is taxable as the entire amount paid is for the sale of tangible personal property.

EXAMPLE 6. Manufacturer EFG contracts with utility DEF for the purchase of natural gas with a separate contract for its delivery. The gas is to be transported from DEF's storage facility near Osceola to EFG's manufacturing plant in Fort Dodge by way of DEF's pipeline. Ownership of the gas passes from DEF to EFG in Fort Dodge. EFG uses 92 percent of the gas which is transported to its plant in processing the tangible personal property manufactured there. The receipts which EFG pays DEF for the transport of the gas are excluded from the transportation exemption, but they are not excluded from the processing exemption. Ninety-two percent of those receipts are exempt from tax because that is the percentage of gas used by EFG in processing. In addition, utility DEF charges manufacturer EFG \$9.95 as a delivery fee for the gas. Since the purchase of the gas has a 92 percent exemption from Iowa sales tax because of a 92 percent usage in processing, 92 percent of the delivery charge of \$9.95 is also exempt from tax.

This rule is intended to implement Iowa Code sections 423.2 and 423.3.
[ARC 5915C, IAB 9/22/21, effective 10/27/21; Editorial change: IAC Supplement 11/2/22]

701—288.15(423) Premiums and gifts. A person who gives away or donates tangible personal property, specified digital products, or taxable services shall be deemed to be a consumer of such property, products, or services for tax purposes. The sales price from the sale of tangible personal property, specified digital products, or taxable services to such persons for such purposes shall be subject to tax.

When a retailer purchases tangible personal property, a specified digital product, or a taxable service, exclusive of tax, for the purpose of resale in the regular course of business and later gives it away or donates it, the retailer shall include in the return the value of the property, product, or service at the retailer's cost price.

When a retailer sells tangible personal property, specified digital products, or taxable services and furnishes a premium with the property, product, or service sold, the retailer is considered to be the ultimate consumer or user of the premium furnished.

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

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¹ Amendments to 15.3(3) "a," definition of "Fuel consumed in processing," (ARC 2349C, Item 1) rescinded by 2016 Iowa Acts, House File 2433, section 6, on 3/21/16. Amendments removed and prior language restored IAC Supplement 4/27/16.